NATHANIEL R. RICHARDSON, Appellant, *v.* EDWIN J. GABBIDON, by his Attorney-in-Fact, SAMUEL B. GABBIDON, Appellee.

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

Argued March 20, 21, 22, 1962. Decided May 10, 1963.

1. A court of equity may decree cancellation of administrator's deeds where the conveyances are shown to be invalid, and where title to real property purportedly conveyed by such deeds is shown to have been acquired by the petitioner seeking cancellation, and not by the grantee named in the deeds.
2. Where the language of a will describes a descendant of the testator as "my grandson," and the descendant so described is a legitimate son of a purported daughter of the testator, the legitimacy of the purported daughter will be conclusively presumed for purposes of adjudication of the right of the descendant to acquire real property by inheritance from the testator.

On appeal, a decree ordering cancellation of administrator's deeds, and upholding the claim of appellee, petitioner below, to title to real property described in the deeds, was *affirmed*.

Momolu S. Cooper, A. Gargar Richardson, Lawrence A. Morgan and *O. Natty B. Davis* for appellant. *Henries Law Firm* for appellee.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

The will of Thomas Smith, who died in 1900, provided as follows in its tenth clause:

> "All the rest and residue of my estate real, personal and mixed of which I shall die seized and possessed or to which I shall be entitled at my decease, I give, devise and bequeath to my beloved daughter Maria A. E. Richardson for life, and after her death it is my wish that whatever of my estate may be left by her not

disposed of shall be divided thus into two parts viz: two-thirds of all the balance shall be divided between her three children, namely, John T. Richardson, Deborah F. Richardson and Toussaint L. Richardson and the remaining one-third to be divided between Charles Smith, A. B. Stubblefield, Sarah Curd, Rosalind Siscoe and Angeline Campbell."

Although Thomas Smith's daughter, Maria A. E. Richardson, was named executrix of his will, the residuary estate was never actually divided among her three children. Nevertheless, because all three of the heirs were of the body of Maria, none of them objected to the joint occupation of the property by the others. Maria died in 1914. In her will, she attempted to dispose of some of the property of the estate to which her three children were entitled under the will of her father, Thomas Smith. Although said children knew that this attempted disposition was in violation of the will of their maternal grandfather, they raised no objection.

In 1932, John T. Richardson, the eldest of Maria's three children, died intestate, leaving no heirs of his body, and no realty over which he possessed outright legal title. Therefore, it goes without saying that whatever property he controlled from the estate of his maternal grandfather, descended to Deborah and Toussaint, his brother and sister, the heirs of his mother. There is no showing that John T. Richardson's estate was legally administered. However, the records show that Deborah and Toussaint subsequently assumed control of the property; for on February 15, 1937, they jointly concluded a lease agreement with Oost Africankansche Compagnie covering Lot Number 323 in the City of Monrovia, the same being a portion of the land which came into their possession as aforesaid by the will of Thomas Smith.

Deborah died in 1938. In her will, she attempted to devise to third parties some of the real property which had been devised to her and her two brothers by the will

of their grandfather. Subsequently Toussaint, the sole survivor of the three children of Maria, objected to the probation of his sister Deborah's will in a case which travelled to the Supreme Court, where Mr. Chief Justice Grimes, speaking for this Court in an elaborate and comprehensive opinion, declared the estate held by John, Deborah and Toussaint Richardson an estate in common, and declared both the will of Marie E. Richardson and the will of Deborah Stubblefield inadmissible to probate. (See *Richardson* v. *Stubblefield,* 7 L.L.R. 107 [1940].) Obviously, then, all properties which remained from the two-thirds of Thomas Smith's estate which had been shared by the three children of Thomas Smith's daughter, Marie Smith-Richardson—John, Deborah and Toussaint —descended to Toussaint as sole survivor of the three.

In 1945, Toussaint L. Richardson died, leaving a will in which he devised sundry tracts of the aforesaid estate to several persons, including the appellant, who was a paternal relative, and whom he nominated as one of his executors. He also devised several parcels of land to his grandson, Joshua Edwin Gabbidon, whom he expressly described as such in his will. The residuary clause of said will provided as follows:

> ". . . all the rest, residue and remainder of my property, I do hereby give, and devise, being either mixed or real, which has not been herein before devised or bequeathed, to him [Joshua Edwin Gabbidon] and his use and behoof forever."

After said will had been probated and registered, the executors of the estate of Toussaint L. Richardson proceeded to administer the estate, and carried out the directions of the testator, except as to the above-quoted provision of the residuary clause.

In 1955, some 23 years after the death of John T. Richardson, and during the administration of Toussaint L. Richardson's estate, Rebecca M. Richardson, the widow

of John T. Richardson, tendered to appellant the following document:

"This is to certify that I, Rebecca M. Richardson, widow of the late John T. Richardson of the Settlement of Virginia, Montserrado County, Republic of Liberia, who died intestate in said county, and who, before his death, handed me several deeds for parcels of land to hold and possess for my natural life, and thereafter, or before my death, I, the said Rebecca M. Richardson aforesaid, should surrender such deeds unto Nathaniel R. Richardson, for himself and his heirs to possess and hold forever, hereby in keeping with my said late husband's instructions, do surrender unto the said Nathaniel R. Richardson the following deeds bearing the names of grantors and numbers as follows:

"Administrator's deed from Charles Henry Capehard to Robert B. Richardson, probated and registered in Volume 31, page 562, Lot Number 5.

"Warranty deed from Thomas W. Haynes to Maria A. Richardson, probated and registered in Volume 28, page 448, Lot Number 2.

"Administrator's deed from John T. Richardson, administrator of the estate of Robert B. Richardson, to Deborah F. R. Stubblefield, registered December 7, 1914, given back to John T. Richardson by his sister above-named, Lot Number 2—Third Range, Virginia—15 acres of land.

"Transfer deed from George Lewis and wife to Thomas Smith, grandfather of John T. Richardson, probated and registered in Volume 12, page 325, Block Number 3, commencing at the southwest angle of the adjoining 10 acres of Block Number 2, on Mesurado River, containing 30 acres of land.

"Administrator's deed from Edward Howard of

the estate of Jack Howard to Thomas Smith, grandfather of John T. Richardson, Lot Number 5, containing 15 acres of land on the Mesurado River, registered in Volume 3, page 62, September 1862.

"William Williams and Mary Jane, his wife, to Thomas Smith, grandfather of John T. Richardson, Lot Number 6, being a portion of Block Number 3, on Mesurado River, containing 15 acres of land. Probated and registered in Volume 9, page 520, August 1862.

"Warranty deed from Maria A. Richardson to John T. Richardson, probated and registered April 1, 1901 in Volume 28, page 305, Lot Number 8—Third Range—containing five acres of land.

"Deed from J. S. Smith, Acting President of Liberia, to Richardson Buck whose services were engaged in the insurrection of Gaytonba, 1839-40 under the command of J. J. Roberts, situated in the Settlement of Mesurado River, Number 2, bearing in the authentic records of said settlement the number 9, containing ten acres of land. Dated November 17, 1870.

"Deed from Edward Jones, dated September 7, 1857, to Thomas Smith, grandfather of John T. Richardson, Lot Number 1, Block Number 2, Mesurado River, containing 100 acres of land. Registered according to law in Volume 9, page 522, August 1862. Adjoining ten acres Block Number 2 (marked of brander) runs: North 45 degrees, East 40, North *intervats* [word illegible] 6450 E. 25 6450 W. 40, North 45 degrees, West 25, being a rectangle of 100 acres of land—Second Range. [Sgd.] Benj. Anderson, Surveyor, Montserrado County, March 5, 1881.

"I, the said Rebecca M. Richardson, widow of aforesaid, further certify that because I was given these

deeds to hold the parcels of land for my natural life, I did not make out a quitclaim deed in my favor, but rather kept them safely to be handed over to Nathaniel R. Richardson, cousin of my late husband, J. T. Richardson, as aforesaid, for himself and his heirs forever as aforesaid.

[Sgd.] "REBECCA M. RICHARDSON,
Widow of the late John T. Richardson of the Settlement of Virginia, Montserrado County."

The estate which was administered by James L. Richardson, who transferred to appellant property of Thomas Smith, deceased, was never shared or divided as was intended, and was transferred only three days after the letters of administration were issued by the Monthly and Probate Court of Montserrado County, without any consideration for the widow, nor in keeping with the statute controlling the premises.

The foregoing historical summary covers the passage of the estate from Thomas Smith to Toussaint L. Richardson, from whom the appellee claims title to the property in question, he having been recognized and declared by the said Toussaint L. Richardson as his grandchild. The whole case seems now to revolve around two basic claims: (1) the claim of Edwin J. Gabbidon, the present appellee, based on descent from Toussaint L. Richardson, his grandfather; and (2) the claim of Nathaniel R. Richardson, the present appellant, based on transfer to him of certain tracts of land by deeds listed in the above-quoted certificate.

Rebecca M. Richardson concluded the above-quoted certificate by stating that, because she was given the deeds described therein to hold for her natural life, she had not executed a quitclaim deed in her own favor, but had kept said deeds to be delivered to the appellant, whom she referred to as the cousin of her late husband, John T. Richardson, for himself and his heirs forever. Although said

certificate bears no date of issuance, it appears from its face that same was presented to the Monthly and Probate Court of Montserrado County in the month of May, 1956, because Probate Commissioner I. Van Fiske ordered a letter of administration dated May 7, 1956, issued in favor of James L. Richardson, brother of the appellant. Under the administration of James L. Richardson, the following transfers of property were made to the appellant:

1. Administrator's deed from James L. Richardson, administrator of the estate of John T. Richardson, to Nathaniel R. Richardson, dated May 10, 1956, for 100 acres of land in Sinkor, Monrovia, situated on the Mesurado River.
2. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May 10, 1956, for 50 acres of land situated on the Mesurado River.
3. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May 10, 1956, for 15 acres of land situated on the Mesurado River.
4. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May 10, 1956, for 30 acres of land situated on the Mesurado River.
5. Administrator's deed from James L. Richardson to Nathaniel R. Richardson from the estate of John T. Richardson, dated May 10, 1956, for 5 acres of land.

All the tracts of land which were transferred to appellant had been the fee simple property of Thomas Smith. It is very peculiar and strange, as well as contrary to law that, on May 10, 1956, only three days after appellant's brother had received letters of administration from the probate court, he executed and delivered to the appellant the above-described administrator's deeds of Thomas Smith's property without even considering the widow of the testator or any claim against the estate.

On October 21, 1959, appellee, claiming title to two-thirds of the estate of Thomas Smith by descent from appellee's grandfather, Toussaint L. Richardson, and alleging that transfer of such property to the appellant was illegal, fraudulent and ineffective, filed a bill which reads, in its body, as follows:

"1. Petitioner says that Samuel D. Gabbidon, of the County of Montserrado and Republic aforesaid, is the lawful attorney-in-fact of Edwin J. Gabbidon of the City of Monrovia, Montserrado County, and that by virtue of a power of attorney duly executed by the said Edwin J. Gabbidon, Samuel B. Gabbidon has lawful and sufficient authority to institute this suit in behalf of the said Edwin J. Gabbidon, who intends traveling to foreign parts, as is evidenced by petitioner's Exhibits A and B, hereto attached to form parts of this bill.

"2. And petitioner further petitions that the late Thomas Smith of the City of Monrovia, County and Republic aforesaid, at the time of his death was the owner of and possessed in fee simple certain realty which he devised to his daughter, Maria A. E. Richardson, for life; and after her death, two-thirds of said land to go to said Maria A. E. Richardson's three children, namely: John T. Richardson, Deborah F. Richardson, and Toussaint L. Richardson, jointly, as more fully appears from Paragraph Ten of the will of said Thomas Smith, hereto attached, marked Exhibit C to form a part of this bill.

"3. And petitioner further petitions that, as to said Maria A. E. Richardson, one of the devisees of the will of said Thomas Smith, after her death said two-thirds of the property, as referred to in Paragraph Ten of the will of said Thomas Smith, and the rest and residue of all the lands not otherwise disposed of in the will of said Maria A. E.

Richardson, inclusive, came to said three children, *viz:* John T. Richardson, Deborah F. Stubblefield, by marriage, and Toussaint L. Richardson, as more fully appears from Paragraph Eight of said will of Maria A. E. Richardson, hereto attached, marked Exhibit D to form a part of this bill.

"4. And petitioner further petitions that Toussaint L. Richardson, one of the devisees of the wills of Thomas Smith and Marie A. E. Richardson, was the last who died, and by operation of law, and in keeping with the doctrine of survivorship, said Toussaint L. Richardson devised in fee to his natural grandson, Edwin J. Gabbidon hereinabove named, as more fully appears from Clauses Ninth and Eleventh of the will of said Toussaint L. Richardson, hereto attached and marked Exhibit B to form a part of this bill.

"5. And petitioner further petitions that, notwithstanding the premises hereinabove asserted, it has come to his certain knowledge recently that false administrator's deeds were illegally, fraudulently and wrongfully executed conveying certain land from the estate of John T. Richardson, one of the aforesaid devisees of the wills of Thomas Smith and Maria A. E. Richardson, to Nathaniel R. Richardson, respondent in these proceedings, which parts and parcels of land, indeed and in truth, are actually parts and parcels of the estate hereinabove referred to in Counts 1, 2, 3 and 4, and also the property of said Edwin J. Gabbidon in fee, as already stated in Count 4, and as more fully appears from said false administrator's deeds hereto attached, marked Exhibits F through K, to form parts of this bill."

Countering the foregoing, appellant alleges that appellee's mother, by whom he was born to Toussaint L.

Richardson, was not born in wedlock nor was she ever legitimized; and that consequently, title to John T. Richardson's property could not have descended through her to appellee. Since this allegation does not impugn Toussaint L. Richardson's right of title by survivorship, descent to an heir of his body seems to be conceded, although appellant contends that appellee is not such an heir.

Appellee on the other hand, alleges that appellant derived no title whatsoever from either John T. Richardson or Toussaint L. Richardson, the surviving heir of John T. Richardson who recognized appellee as his grandson in the above-quoted residuary clause of his will.

Before resolving the issue presented by appellant's challenge to the legitimacy of appellee's mother, let us examine the means by which appellant acquired possession of the property in question. Unlike the appellee, the appellant has asserted no claim of title by descent or devise, but rests his claim primarily on delivery of deeds to him by Rebecca M. Richardson, pursuant to what she described in the undated certificate quoted *supra* as the instructions of her late husband, John T. Richardson.

Said certificate was admitted to probate; and on the strength thereof, letters of administration were issued in favor of James L. Richardson, appellant's brother, who had requested the opening of the estate more than 23 years after the decedent's death, contrary to the statutory requirement that, except for foreign debts, all intestate estates must be closed within one year after the death of the intestate decedent.

Appellee's title to the property in question has been challenged by appellant on the ground that appellee is not of heritable blood because his mother, through whom he claims to have acquired title, was born out of wedlock, was not thereafter legitimized, and consequently never inherited from her natural father. The extent to which this allegation has been proved is not shown in the record, but appellant's counsel took the position in oral argument

before this Court that appellee had failed to make denial thereof. Although no express denial appears to have been entered, the record does show that appellee asserted ownership of the property by virtue of the will of his grandfather, Toussaint L. Richardson, who appellant alleged was the sole survivor of a joint tenancy created by the will of Thomas Smith.

Since this Court has held in *Richardson* v. *Stubblefield, supra,* that said estate was not a joint tenancy, we must turn to appellant's allegation, that appellee is not of heritable blood in view of his mother's alleged illegitimacy. Neither the appellant nor any collateral heir of Toussaint L. Richardson has produced any evidence of non-heritable blood with respect to appellee or his mother. But such evidence would be required to rebut the acknowledgment of appellee by Toussaint L. Richardson as his legitimate grandson. Absent such evidence, there is no ground on which this Court could hold that appellee is not the heir of Toussaint L. Richardson, when appellee was described by Toussaint L. Richardson himself, in his will, as his grandson. We therefore conclude and hold that appellee is the legitimate grandson, next of kin, and surviving heir of Toussaint L. Richardson, and as such is entitled to the property of Thomas Smith. We further hold that the deeds in question should be ordered cancelled as prayed for by appellee.

In addition, we have decided to dismiss the appeal filed in this court during the October, 1960, term in the ejectment action of *J. N. Togba, M. V. Privilegi* and *Nathaniel T. Richardson,* appellants, v. *Joshua Edwin Gabbidon,* appellee, since said case relates to a portion of the identical property covered by the deeds ordered in the instant case.

The judgment of the court below is hereby affirmed with the amendments stated, *supra.*

Affirmed.

MR. JUSTICE PIERRE, with whom MR. JUSTICE WARDSWORTH concurs, dissenting.

This case was argued and submitted last March, but was not decided. Now, after more than a year of deliberation, the majority of our colleagues have voted to affirm the judgment of the court below. Mr. Justice Wardsworth and I disagree with this decision, and have voted to reverse the judgment for reasons discussed in this dissenting opinion.

We might mention, however, that at the time when we voted in Chambers, the position taken by our colleagues was that the case should be remanded because neither of the parties was entitled to the property covered by the deeds which the suit was brought to cancel, since Nathaniel R. Richardson was not related to Thomas Smith, and Edwin J. Gabbidon had not denied his lack of heritable blood as alleged in Nathaniel R. Richardson's answer. But our colleagues have now elected to change their position without notice to us who voted in the minority. We were not favored with a copy of the majority opinion, and have not been given a copy up to the present time, although the majority opinion binds all members of the Supreme Court.

I have decided to review the issues of this case in some detail, not only because of their importance in this case, and in future cases, but also because they bear on certain customs as to transfer of property, as practiced by the old families of this country.

It was the custom among the old families that a man wanting to give a piece of property to his son, or to a relative, or to someone who might have found favor in his sight, would physically deliver the deed for the property, intending thereby to donate the land, transfer the fee, and vest the title in such recipient. We know, today, that such a method of transferring property is contrary to the

strict requirements of the law of real property, as well as conducive to confusion, and that it affords opportunity for land-hungry strangers to invade unsuspecting family circles, and to try to enforce claims to property not legally protected by the execution of proper deeds of transfer.

It is significant, however, that this unusual custom has not produced much litigation in the past; and this must be due to the fact that the custom was well known to all of the early families, and was practiced and respected by them all. For instance if Tom, a servant reared in the Jones family, was given a deed for a lot on which he built his house, although that deed was still in the name of the head of the family, and Tom was without a transfer to vest the title in himself, no member of that family would ever attempt to question or disturb his peaceful occupation, even down to his children's use of it after his death. Every member of that family, and every relative thereof, would respect the decision of the head of the house or eldest in the family. This custom has been exemplified in the present case.

To say a little more about this custom, where relatives had such respect for these decisions, it was unheard of to violate the wishes of the donor, and it was unknown for strangers to intrude into the sacred affairs of the family circle. But as time has passed by, with it has gone many of the customs known to and practiced by our fathers; customs which so honorably and so innocently portrayed an abiding faith and confidence in the strength of the bonds which held family ties together; bonds almost unknown in family circles today. Gradually, people have begun to realize that with enlightenment, progress and improvement have come treachery, deceit and avarice; and therefore the necessity has arisen for individual members of families to protect their property, not only against the strangers and the graspers, but also against each other. This has also been exemplified in the present case, even to the extent that Thomas Smith's right to devise his own

property to chosen individuals has now been made the subject of heated court litigation by a person who can claim no more legal relationship to the testator than can the other party in the case. Such is the extent to which land-hungry people are prepared to go today.

During our deliberations in Chambers, it was suggested that this case should be remanded either for a new trial or for the parties to replead. We disagreed with this view because there is no evidence not already in the record which could conceivably be introduced under new pleadings, or which could cure the laches which had already attached when appellee filed his bill in 1959. And if laches should have barred him then, how much more barred would not he, or any other person, be who filed suit later to cancel the same deeds? No new evidence could now rebut the admission of appellee contained in the two letters he wrote to the President of Liberia acknowledging appellant's ownership of John T. Richardson's property after he had inspected the deeds. And if his written admission could estop him, in 1959, from seeking to repudiate his own acts, how could he now properly contend that he would not be so estopped for all time in the future?

We cannot perceive how a remand of this case could be productive of results different from those which the circumstances appearing in the record would dictate in keeping with the law. Remand of the case could not give appellee that heritable blood the absence of which was alleged in appellant's answer and rejoinder, and not denied by appellee in subsequent pleadings; nor could it cure the neglect of the appellee to object to the probation of the deeds at the proper time. So to what purpose a new trial, except to delay an inevitable ending of a plain case, or to avoid applying clear and elementary principles of law? The same documents upon which the old pleadings were drawn would still have to be used in drafting new pleadings, or in the trial of the issues raised by the

pleadings. No position not already taken could be taken in another trial of the same issues based on the same evidence. All the circumstances which have influenced our decision for a reversal of the present judgment would remain the same, and so must have the same influence upon any other decision. And since the issues herein are issues of law, another trial could not correct fundamental legal errors committed in the application of elementary legal principles to the facts out of which this case has arisen.

The tenth clause of Thomas Smith's will directed that two-thirds of his real property not disposed of by his daughter should pass in fee to his three grandchildren, one of whom was John T. Richardson. No new document or new trial could change that; nor could any new document or new trial change the universally accepted principle that wills are interpreted literally and not by implication. According to our colleagues, indeed, the appellant is not related to Thomas Smith; but the property covered by the deeds sought to be cancelled is no longer Thomas Smith's property, he having willed it to his grandson, John T. Richardson who, as the record shows, has left it to his collateral relative, the appellant. John T. Richardson had as much right to leave his property to his cousin as Thomas Smith had to leave his to his grandson; so of what benefit would another trial have been, except to close our eyes to performing a duty dictated by the law and the facts appearing in the record? These are the plain and simple grounds of our disagreement with the views of our colleagues; and it is also for these reasons that we believe that the judgment of the court below should have been unconditionally reversed.

We shall therefore proceed to review the circumstances out of which this case has grown, as we have been able to cull them from the record before us, and we shall also cite and quote the law as we understand it, and thereby demonstrate the legal grounds upon which we have relied in voting to reverse the judgment.

The late Thomas Smith of Montserrado County died in 1898, leaving real and personal property which he disposed of by a will which was duly probated and is registered in the archives of Montserrado County. He left a daughter, Maria, who became the wife of the late Robert Richardson, and unto whom were born three children: John T. Richardson, Deborah F. Richardson, and Toussaint L. Richardson. The tenth clause of said will reads as follows:

> "All the rest and residue of my estate real, personal and mixed of which I shall die seized and possessed or to which I should be entitled at my decease, I give, devise and bequeath to my beloved daughter Maria A. E. Richardson for life, and after her death it is my wish that whatever of my estate may be left by her not disposed of shall be divided thus into two parts viz: two-thirds of all the balance shall be divided between her three children, namely, John T. Richardson, Deborah F. Richardson and Toussaint L. Richardson and the remaining one-third to be divided between Charles Smith, A. B. Stubblefield, Sarah Curd, Rosalind Siscoe and Angeline Campbell."

Thus, by express provision and not by implication, that is to say, by the actual wording of the above-quoted clause of his will, Thomas Smith directed the transfer to the Richardson family of two-thirds of the remainder of his real property not disposed of by his daughter Maria. And if, in 1898, it was Thomas Smith's intention that his property should be owned by the Richardsons who were not related to him, I fail to see upon what legal or equitable ground anyone could question his right to give his property to any family he named in his will. Therefore, the contention of our colleagues that appellant, being a relative, was not entitled to the testator's property, is in our opinion, without proper legal or reasonable basis in view of the expressed intent of said testator.

Maria lived for 16 years after her father's death, and

then died, leaving three children who were to benefit, with others, after her death, under the above-quoted clause of Thomas Smith's will. She was named sole executrix of said will; and in executing the above-quoted tenth clause thereof, she is alleged to have given to each of her three children a number of her father's deeds for the two-thirds remainder property which should have come to them as residuary legatees. Certain deeds were given to John T. Richardson; and we shall see later in this opinion what property they cover. Other deeds were given to Deborah, and still others were given to Toussaint, the youngest child. There is nothing in the record which proves that Maria physically delivered these deeds; but if she did, she followed the usual custom.

Of course, in order to effectuate the division of the property among John, Deborah and Toussaint, Maria should have issued executor's deeds to each, or they should have executed quitclaim deeds to each other. Failure to execute such deeds could have left all of the three separate portions of the vested remainder property undistributed even after the original deeds had been physically delivered. In other words, even though an attempt had been made to execute the above-quoted provisions of the will of Thomas Smith literally, by physical delivery of the old deeds, no legally valid conveyance was thereby effected, since title to the respective pieces of property was still vested in the estate of the testator instead of in the legatees named in his will. It nevertheless remains questionable whether the failure to execute either executor's deeds by the executrix or quitclaim deeds by the residuary legatees nullified any practical division Maria might have made in her attempt to carry out the terms of her father's will. Since the ultimate object of the above-quoted provisions of the will was to enable Thomas Smith's three grandchildren to share the two-thirds remainder property after Maria's death, the literal as well as the legal interpretation of the specific words used could conceivably

apply, depending of course, on agreement of the legatees at the time of the practical division. But this legal issue is not before us; and I have only mentioned it in passing.

It is significant, in the light of subsequent events, that the three legatees occupied the deed-controlled portions of their grandfather's property without dispute or contention for 31 years after their mother's death in 1914, and until the death of Toussaint, the last survivor, in 1945. It is further significant that, although John T. Richardson died without issue in 1932, some 18 years after his mother's delivery of the deeds of the property, and although his brother and sister survived him, neither of them attempted, in his or her will, to dispose of that portion of Thomas Smith's property alleged to have been conveyed to their brother through physical delivery of deeds by their mother. This has left me with the impression that Maria's division and apportionment of the property may well have been agreed to by her children. The possibility of such an agreement is further indicated by the fact that each of the children eventually disposed of the portion of their grandfather's property covered by deeds he or she held, in such a manner as to suit his or her fancy, without quitclaim deeds from the others.

The two elder of Maria's three children died without issue; but to Toussaint, the youngest, one daughter is alleged to have been born. She married Samuel Gabbidon, the attorney-in-fact in this case, and unto their union was born Edwin J. Gabbidon, the appellee. Toussaint, the grandfather of the appellee, died in 1945, and willed most of his real property to the appellee whom he described in the will as his "grandson." Perhaps it was not coincidental that both the attorney-in-fact and the appellant were named as executors of Toussaint's will; and they distributed the legacies to the appellee.

The circumstances out of which this case arose really go back to a letter written by appellant on March 11, 1957. The letter reads as follows:

"MR. SAMUEL B. GABBIDON
MONROVIA
"DEAR SIR:

"I find that the 25 acres of land situated in Sinkor that was misunderstood to have been the property of the late Mr. T. L. Richardson is not his land. The 25 acres fall within Blocks Number 1 and 2. The 25 acres that were given to me in satisfaction of a debt of the estate were also erroneously described. Mr. [Toussaint] Richardson's will calls for Block Number 3, Mesurado River. You will recall that the deed that you issued to the late Lewis McCauley had to be changed. Blocks Number 1 and 2 have been legally turned over to the undersigned by the administrator of the estate of the late John T. Richardson, late of the Settlement of Virginia, which properties are probated and registered and taxes paid in keeping with law.

"If you will have 25 acres surveyed out of Block Number 3 in the Niepay Town area for yourself, I will sign the deed as one of the executors. This will be for your own safety and that of your heirs and assigns. It was good that you did not probate the deed that was signed by us, nor did you make any improvements thereon.

"Very truly yours,
[Sgd.] "NATHANIEL R. RICHARDSON."

It would seem that this letter was forwarded by the recipient to his lawyer, Counsellor Richard Henries, who, in April, 1957, wrote the following letter to appellant in respect to the land covered by the deeds in question:

"NATHANIEL R. RICHARDSON, ESQ.
SINKOR, MONROVIA
"DEAR SIR:

"Your letter of March 11, 1957, addressed to Mr. Samuel B. Gabbidon, has been referred to me for my attention and legal advice.

"Please be good enough to exhibit to me the title

under which you are claiming the properties of the late John T. Richardson.

"With kindest regards,

"Very truly yours,
[Sgd.] "RICHARD HENRIES,
Counsellor at law."

Appellant replied to the above letter the same day, April 2, 1957; and here is what he wrote in reply:

"COUNSELLOR R. A. HENRIES
MONROVIA, LIBERIA
"DEAR COUNSELLOR HENRIES:

"In response to your request in the interest of Mr. Samuel B. Gabbidon, I am forwarding to you the title deeds under which I claim the properties of the late John T. Richardson of the Settlement of Virginia, Montserrado County.

"1. Title deed calling for 100 acres of land, Block Number 1, Mesurado River.

"2. Title deed Number 2, 30 acres of land, Block Number 2.

"3. Title deed Number 3, Block Number 3, 50 acres.

"4. Title deed Number 5, 15 acres.

"5. Title deed Number 6, 15 acres.

"These titles are accompanied with receipts for taxes duly paid. I have also certain title deeds for lands of the late John T. Richardson, situated in the Settlement of Virginia, as well as his books, large mirror and life-size photograph, which I think that Mr. Gabbidon might want to claim.

"Sincerely yours,
[Sgd.] "NATHANIEL R. RICHARDSON."

It should be observed that a list of the deeds is included in the above-quoted reply. Thus, as far back as April, 1957, appellee's attorney-in-fact and appellee's lawyer had known of appellant's claim to John T. Richardson's property, and had even inspected the deeds. What effect

this was to have on subsequent developments will be seen later in this opinion. After the above-quoted exchange of correspondence, there seems to have been a lull until May 27, 1959, when appellant and appellee's attorney-in-fact jointly addressed to the President of Liberia the following letter:

"PRESIDENT WILLIAM V. S. TUBMAN
THE EXECUTIVE MANSION
MONROVIA,
"DEAR MR. PRESIDENT:

"We take pleasure to jointly inform you that we accept the report of the Director, Division of Surveys, in connection with the area of land expropriated by Act of the Legislature, passed and approved February 21, 1959, representing property from the estates of John T. Richardson and Toussaint L. Richardson now owned by the undersigned as per original and transfer deeds submitted by us to the Department of Public Works and Utilities, Division of Surveys.

"We respectfully request that you will kindly direct the issuance of the title deed or deeds to Government, and authorize the payment in equal proportion to the parties concerned.

"We wish to express thanks and appreciation to you and to the Department of Public Works and Utilities, Division of Surveys, for the efficient manner in which the survey has been terminated.

"We remain yours truly,
[Sgd.] "JOSHUA E. GABBIDON.
[Sgd.] "NATHANIEL R. RICHARDSON."

Again, on June 6, 1959, appellant and appellee's attorney-in-fact jointly addressed to the President a letter, which reads as follows:

"DEAR MR. PRESIDENT:

"We would appreciate it very much if you would kindly authorize the Treasury to give each of us an

advance payment in the sum of $6,000 on the land that has been expropriated by the Government for the new cemetery, and make final payment at the signing of the deed to the Government, to enable us to prosecute building now in progress and for other urgent needs.

"Thanking you very much for your kind consideration,

"We are, very truly yours,
[Sgd.] "JOSHUA E. GABBIDON.
[Sgd.] "NATHANIEL R. RICHARDSON."

A few months after the above letters had been addressed to the President, the appellee, through his father, Samuel B. Gabbidon, as his attorney-in-fact, brought this suit to cancel a number of administrator's deeds which had been duly executed and delivered to appellant for property of John T. Richardson. Included among these deeds were four which had originally belonged to the late Thomas Smith, grandfather of John T. Richardson, and two others for property devised to John T. Richardson by his mother, but not from the Thomas Smith property. I might mention here that appellee's acknowledgment of appellant's claim to John T. Richardson's property, as expressed in the two above-quoted letters to the President, was made the subject of special traverse in the bill of exceptions.

It would seem necessary, if we are to proceed intelligently, that we examine the deeds which appellee petitioned the court to cancel. For, under the pleadings filed in this case, we would appear to have jurisdiction only over those deeds which purport to convey real property owned by Thomas Smith before his death and devised as part of the two-thirds share in which he gave his daughter a life estate, with remainder to her three children. Of the six deeds mentioned in the petition for cancellation, however, four cover Thomas Smith's property as mentioned

before, and two cover property never owned by Thomas Smith and which came into Maria's possession only after his death. The latter two are described as follows:

1. Exhibit G, for 50 acres of land, from T. W. Haynes to Maria Richardson, and from Maria Richardson to John T. Richardson. This deed was issued to Maria on May 29, 1901, after Thomas Smith's death.
2. Exhibit K, for 5 acres of land, from T. W. Haynes to Maria Richardson. This deed was issued on May 17, 1901, also after Thomas Smith's death.

It therefore seems clear that among the six deeds made profert with the bill for cancellation are two which could not be material to the issues in this case, and consequently we would be without authority to render any judgment concerning them. Moreover, among the deeds delivered to Nathaniel R. Richardson by John T. Richardson's widow, are some which came into John T. Richardson's possession and cover property not from his mother's side, but from Robert B. Richardson who bears no relationship to Thomas Smith. One of these is the administrator's deed from Charles Henry Capehart to Robert B. Richardson, mentioned in the list of deeds handed over by John T. Richardson's widow.

The petition for cancellation set forth, in substance, the following grounds:

1. That a joint tenancy was created by the tenth clause of Thomas Smith's will under which the property in question was left to Maria for life and to her three children after her death; and in such an estate the principle of survivorship would control. This was laid in the bill and insisted upon in the reply.
2. That Edwin Gabbidon, being the only child of the last surviving heir of the late Thomas Smith, should take under said estate in joint tenancy, and is entitled to hold all that was left of the two-thirds

remainder property covered by the tenth clause of Thomas Smith's will. This was the position taken and insisted upon by petitioner throughout his pleadings.

3. That the administrator's deeds for John T. Richardson's property which came to him from his grandfather, Thomas Smith, executed by the probate court in favor of Nathaniel R. Richardson, should be cancelled for having been fraudulently obtained. The bill alleges that the said Nathaniel R. Richardson concealed these deeds for Thomas Smith's property which he found when he administered the estate of the late Toussaint L. Richardson; and that it was for property covered by these concealed deeds that the administrator of John T. Richardson's estate had issued administrator's deeds to Nathaniel R. Richardson.

In the answer which appellant filed, the following points, among others, were pleaded:

1. That the bill failed to state with particularity the nature of the fraud alleged to have been committed in the issuance of the deeds; or by whom and in what manner such fraud was committed.
2. That the power of attorney executed in favor of Samuel Gabbidon by his son, the appellee, was a nullity, since the said appellee was of age and residing in the Country, and under no disability to act for himself.
3. That appellant was not in possession of any property belonging to Toussaint L. Richardson, or to which appellee could claim any rights under the principle of survivorship; but that, according to the division directed in Thomas Smith's will and carried out by his executrix, Toussaint, as one of the legatees, had been given certain specific pieces of property enumerated in Count 5 of the answer; and that the property covered by the several deeds

sought to be cancelled formed no part of any of the several pieces so given to Toussaint and therefore could not belong to the appellee in fee, as had been alleged in the complaint.

4. That appellant had acquired title to John T. Richardson's share of Thomas Smith's property through the probate court, according to law and with the full knowledge of appellee and his attorney-in-fact who had interposed no objections, but had acknowledged appellant's ownership of the said property by letters to the President of Liberia. These letters were made profert and have already been quoted in this opinion.
5. That the appellee, being born of an illegitimate child of the late Toussaint L. Richardson, youngest of Maria's three children, could not legally inherit any property belonging to Thomas Smith beyond what was willed to him by Toussaint, his purported grandfather; so that his claim to legal right of the rest of the property left to Maria's three children under the principle of survivorship was without legal foundation.

Although the pleadings continued up to and including the surrejoinder, no new issues upon which a decision could justly turn were raised subsequent to those appearing in the petition and the answer. The foregoing, therefore, in addition to the question of estoppel, which was argued from the briefs on both sides, would seem to constitute the important issues presented for our consideration and final decision.

The several issues of law raised on both sides were passed upon by Judge Findley in a lengthy ruling. Reading through this document which must have been intended to guide the trial court, and upon which evidence should have been taken, we must say that, instead of the simplifiaction of complicated issues of law which is more or less expected in such rulings, the law issues in this case

were even more complicated and confused by the learned judge's elaborate ruling. In that mass of legal erudition the parties on both sides found themselves—and we on this bench were no less unfortunate—confused and lost in a labyrinth of strange interpretations of old and well-founded legal principles. This has necessitated our having to pass again and unnecessarily, on the entire pleadings together with the record of the testimony on the trial; and so we do here what should have been done in the court below.

The bill of exceptions upon which this case has come up to us contains 22 counts, most of which related to the appellant's overruled exceptions to the introduction of testimony. However, we have found ourselves compelled to review the entire case as aforesaid, including passing upon the merits or demerits of the several legal positions taken in the pleadings and bill of exceptions.

It would appear that John T. Richardson, before his death, had instructed his wife to keep and deliver to his cousin, the appellant, a number of deeds for property which had been left to him by his mother and other relatives. It is also alleged that some of these deeds covered property which constituted his portion of the two-thirds remainder property left to Maria, his mother, and thereafter to her three children in keeping with the terms of Thomas Smith's will. According to what came out at the trial and appears in the record, John T. Richardson told his wife before his death; and she carried out his wishes and delivered to appellant all the deeds of property of which her husband died possessed. The record shows that John T. Richardson died in 1932 and that the deeds were not delivered to appellant until 1955. Upon receiving the deeds, he requested his cousin's widow to certify the conditions under which she has given him these documents, an act which was to become of the greatest importance within a few years from that time. This certificate is registered in the archives of Montserrado

County; it was received into evidence under the signature of the Secretary of State, and seal of the Republic; it stands unchallenged as a written document; and it constitutes a valid instrument which should be given legal effect.

It is significant that, pursuant to this certificate, not only deeds from Thomas Smith, but deeds from other sources, were delivered to appellant. In this connection, the appellee might have claimed a right to these other properties as well, since they also belonged to John T. Richardson, his grandfather's brother; and if, under the principle of survivorship, he could claim real property of this relative on the maternal side, he should be able to claim from the paternal side of the same relative under the same principle. However, this is in passing.

It is also significant that the physical delivery of deeds to appellant by John T. Richardson's widow in 1955 followed the same pattern alleged to have been adopted by Maria in 1914 in the physical delivery of her father's deeds to her three children. But unlike what had been done by Maria's children in respect to Thomas Smith's property covered by the deeds which are supposed to have been divided among them, appellant petitioned for letters of administration which were duly issued to James L. Richardson by the probate court on May 7, 1956.

The record further reveals that, although the intestate estate of John T. Richardson remained under administration of the probate court for a period of more than a year, yet no objections were raised, either to the court's handling of this estate after the unusual lapse of so many years, or to the transfer of the property to appellant or to the probation and registration of the administrator's deeds issued during that period of authority of the probate court. This is strange indeed, in view of the fact that both the appellee and his attorney-in-fact were resident within the jurisdiction of the probate court and are not shown to have been under any legal disability which could have pre-

vented them from questioning the acts of the administrator of the intestate estate of John T. Richardson and/or the probate court.

> "A party who, being under no legal disability at the time stands by and permits property, which he claims, to pass into the possession of another without objecting thereto at the time, is presumed to have assented to the transaction and is estopped from afterwards raising claims thereto." *McAuley* v. *Madison,* 1 L.L.R. 287 (1896), Syllabus 5.

This point was stressed in Count 7 of appellant's brief and forcefully argued before us. Could it be that appellee did not know at the time that he was the only heir of the last surviving grandchild of Thomas Smith? Or could it be because he had already acknowledged appellant's rights in letters to the President of Liberia? But no matter what the reason, the appellee's silence at this important time is significantly peculiar in the light of present circumstances. The record reveals that it was not until more than three years after administrator's deeds for John T. Richardson's intestate estate had been issued, and the estate closed, that appellee, through his father as his attorney-in-fact, instituted proceedings to cancel said deeds.

Reference has been already made to the fact that appellee, as well as his attorney-in-fact and his lawyer, knew as far back as April, 1957, that appellee had come into possession of all of John T. Richardson's real and personal property and that deeds transferring title to said property had been duly executed, probated and registered according to law. This knowledge is shown by letters quoted *supra;* and no questions seem to have been raised at the time. Two years later, that is to say in 1959, appellee was to acknowledge appellant's right to ownership of the land in the two letters written to the President of Liberia quoted *supra.*

Under our law, voluntary admissions of parties are binding; and they are all the more binding when such admissions have been reduced to writing.

> "Voluntary admission made by a party is evidence against such party making same and where it does not appear that said admission was made from threat, fear or inducement, it is evidence of no low grade." *Dennis* v. *Republic,* 3 L.L.R. 45 (1928), Syllabus 1.
>
> "All admissions made by a party himself or by his agent acting within the scope of his authority are competent evidence." 1956 Code, tit. 6, § 691.

Appellant has contended that not only do the appellees' own admissions as contained in the two letters quoted *supra* estop him from disclaiming acts the legal completion of which he admitted; but the completion of these acts being the result of judicial proceedings, he is estopped from denying the legality thereof. Here are quotations of authority on the point:

> "The plea of estoppel is a good plea, and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a party to disclaim his acts. The same rule applies to privies." *Clark* v. *Lewis,* 3 L.L.R. 95 (1929), Syllabus 2.
>
> "In the broad sense of the term 'estoppel' is a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled by the acts and proceedings of judicial or legislative officers, or by the acts of the party himself, either by conventional writing or by representations, expressed or implied, *in pais.*" 16 CYC. 679 *Estoppel.*
>
> "When a party, with knowledge of facts entitling him to recission of a contract or conveyance, afterward, without fraud or duress, ratifies the same, he has no claim to the relief of cancellation. An express ratification is not required in order to thus defeat his

remedy; any acts of recognition of the contract as subsisting or any conduct inconsistent with an intention of avoiding it, have the effect of an election to affirm." 6 CYC. 297 *Cancellation of Instruments.*

Prior to writing the letters to the President of Liberia in 1959, appellee's ignorance of the true facts might have constituted a strong defense against the plea of estoppel interposed by appellant. But in this case, it was shown that, two years before, appellant had put his cards on top of the table and without objections, by exhibiting the deeds which gave him legal title, which deeds were shown to have been lawfully executed, probated and registered.

". . . A deed, lawfully executed, is evidence against all parties to it and it is evidence of all title or rights transferable by it." *Smith* v. *Hill,* 1 L.L.R. 157 (1882), Syllabus 1.

Appellee certainly must be said to have admitted the existence of appellant's title in the letters to the President acknowledging that the property was indeed appellant's. Under the principle of estoppel, how could appellee be permitted to repudiate such an admission?

"Knowledge of the truth as to the material facts represented or concealed is generally indispensable to the application of the doctrine of equitable estoppel. It is not, however, indispensable that the knowledge should be actual if the circumstances are such that a knowledge of the truth is necessarily imputed to the party sought to be estopped; or if he has actively and recklessly interfered to the prejudice of another; or if his ignorance is due to culpable negligence." 16 CYC. 730-732 *Estoppel.*

Even if appellee could have claimed ignorance of the true facts regarding the disposition of John T. Richardson's property, the negligence which is so apparent on his part, or on the part of his principals before him, in not having John T. Richardson's estate administered and

closed during all of the 24 years preceding the delivery of John T. Richardson's deeds to appellant would estop appellee from challenging the validity of those deeds.

> "Ignorance or mistake if it appears from culpable negligence will not prevent an estoppel." 16 CYC. 734 *Estoppel.*

There is so much legal authority to support our position with regard to estoppel that we need not dwell further on this well-established doctrine. We shall next advert to the question of joint tenancy.

One of the main issues to be decided in this case is whether the estate created by the tenth clause of Thomas Smith's will was an estate in joint tenancy or an estate in common. In order to arrive at a proper solution of this question, it might be well to go back and review the fundamental principles of inheritance and of descent of property, not only in the common law as it has come down from the early English land tenures, but also as our fathers applied these principles to given cases according to their understanding, and as their application has persisted from the earliest days of the Republic.

Going back to the old land tenures of England from which the Americans derived most of their laws on related subjects, and which our fathers in turn brought with them to their new home in Africa, there are several classes of estates. In this case, we are most concerned with one group of the several species, and we shall confine ourselves to that one with its attending branches; that is to say, freehold estates in general, and particularly those in remainder, severalty, joint tenancy, coparcenary, and common.

Lands in most countries like ours are, in the majority of cases, held as estates which come either by descent or by purchase; the latter of these two being that under which the tenth clause of Thomas Smith's will falls. It needs no great deal of literary explanation or legal erudition to show that, by Thomas Smith's will, his daughter

Maria was left with a life estate in the whole property; and at her death what was not disposed of would go to remaindermen in the following proportions: one-third to be shared equally among Charles Smith, A. B. Stubblefield, Sarah Curd, Roselind Siscoe, and Angeline Campbell, and two-thirds to be shared equally among John, Deborah and Toussaint, the children of his daughter, Maria. Thus the will of Thomas Smith created an estate in possession for life in his daughter, with remainder vested interest in fee to be enjoyed at her death by the remaindermen named hereinabove. The all-important question still remains: was the remainder estate which was left to John, Deborah and Toussaint, an estate in joint tenancy or an estate in common?

Before answering this important question, we might mention, in passing, that it is very singular that, although no transfer deeds were ever issued to any of the legatees under Thomas Smith's will, yet only the property covered by the deeds left to one of the remaindermen seems to have become the subject of contention. John T. Richardson's portion of the property, the deeds for which are the subject of this suit, was devised to him under his grandfather's will; and it was devised at the same time, in the same manner, under the same conditions, and in the same instrument as Deborah's and Toussaint's shares of the same property, not to mention the one-third portion shared by five other remaindermen. If the principle of survivorship controlled the disposition of John T. Richardson's share of the property, we wonder why the same principle was not applied to the property disposed of by Deborah, since she also predeceased Toussaint. She disposed of such property in her lifetime, yet no quitclaim deeds were ever executed by the remaindermen, and no executor's deeds were issued by the executrix. How did Deborah, or for that matter, any of the other remaindermen, dispose of joint property held under deeds delivered to them by Maria, without transfer or quitclaim deeds, and without

the hue and cry which has attended the disposition of John T. Richardson's share of the same property? But let us continue our very interesting discussion of joint tenancy.

Estates in joint tenancy and estates in common are defined as follows by Blackstone:

> "An estate in *joint-tenancy* is where lands or tenements are granted to two or more persons, to hold in fee-simple, fee-tail, for life, for years, or at will.
>
> . . . . .
>
> "The *creation* of an estate in joint-tenancy depends on the wording of the deed or devise, by which the tenants claim title: for this estate can only arise by purchase or grant, that is, by the act of the parties, and never by the mere act of law.
>
> . . . . .
>
> "The *properties* of a joint estate are derived from its unity, which is fourfold; the unity of *interest,* the unity of *title,* the unity of *time,* and the unity of *possession;* or in other words, joint-tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession."
>
> "Tenants in *common* are such as hold by several and distinct titles, but by unity of possession; because none knoweth his own severalty, and therefore they all occupy promiscuously. This tenancy therefore happens where there is a unity of possession merely, but perhaps an entire disunion of interest, of title, and of time." BL. COMM., Bk. II, Ch. XII.

Applying these universally accepted definitions to the tenth clause of Thomas Smith's will, we have no hesitancy in declaring that an estate in common was created, and not an estate in joint tenancy as is contended in the bill for cancellation. One of the outstanding requirements in

joint tenancy is that there be no division, expressed or implied, in the grant to the tenants. Any words implying a division of the grant makes the estate an estate in common, even though the testator might have intended to create a different kind of estate. Therefore it would seem that, if the will had not specifically required that there be a division among the remaindermen, an estate for life with joint remainder fee vested in John, Deborah and Toussaint would have been created. But when the testator indicated his desire for the remainder property to be divided, he thereby destroyed the possibility of a joint tenancy because, with this division, the unities of interest and title were immediately eliminated. As Mr. Justice Grimes, speaking for this Court, said in *Richardson* v. *Stubblefield,* 7 L.L.R. 107, 114 (1940):

> "As soon as the idea of a division enters, the whole concept of joint tenancy is dispelled. It is our opinion, therefore, that the intention of testator, as expressed in the last will and testament of the late Thomas Smith, was to bestow upon his daughter Maria a life estate, with two-thirds of the remainder vested in her three children to take effect after death, at which time they should hold one part each of said two-thirds devised to them as tenants in common."

It must be concluded, then, that the tenth clause of Thomas Smith's will devised a remainder in common to John, Deborah and Toussaint after termination of Maria's life estate. So intricate, and yet consistently beautiful, is the law of inheritance.

There has been much contention as to the power of attorney executed by Edwin J. Gabbidon to his father, who has sued herein as attorney-in-fact. The appellant has contended that, since the appellee was of age and under no legal disability to act for himself, his father could not act for him. We have not been able to agree with this contention; for it is our opinion that no one can legally question the right of a party to the services of an

agent or attorney; and it does not matter that the principal is of age and able to act for himself.

It was also alleged by appellant that Counsellor Richard Henries and certain members of his law firm—which firm is of counsel for the appellee—acquired portions of the property in question from the appellee whilst this case was still pending before the courts. The appellant has relied upon Rule 10 of the Code of Moral and Professional Ethics promulgated by this Court in 1958, which reads as follows:

> "No lawyer should acquire interest in the subject matter of a litigation which he is conducting, either by purchase or otherwise, which said interest he did not hold or own prior to the institution of the suit."

Laid down in the rules governing the ethical conduct of lawyers in Liberia is a procedure which entitles every member of the profession to defend himself against any charges of unethical conduct alleged against him. According to this procedure, every lawyer has a right to be regularly charged, confronted with his accusers, and tried, and is entitled to appeals if dissatisfied with the decision of the Grievance Committee in the first instance, and with that of the National Bar Association in the second. In any case, discipline of a lawyer for professional misconduct can only legally be applied and enforced by the Supreme Court sitting *en banc;* and then only after the matter has been appealed from decisions of the two bodies named herinabove. This Court should not be expected to set the improper and immoral precedent of violating its own rules. The circuit court was not the proper forum where such an issue should have been raised.

We come now to consider another important point in this case—a point which was raised in the answer of the appellant, and was not denied or traversed in subsequent pleadings filed by the appellee. Appellant alleged that appellee was born of an illegitimate child of Toussaint L. Richardson, and that said child was never legitimatized

so as to give appellee that heritable blood which alone could entitle him to benefit under the principle of survivorship asserted in his pleadings. Although this allegation was not denied by appellee, the learned judge, in ruling the case to trial, sought to pass upon the issue in language which has left us uncertain as to his legal meaning, but which implied that because Toussaint L. Richardson referred to Edwin J. Gabbidon as his grandson in his will, that was legally sufficient to indicate his acceptance of him as a descendant of the Thomas Smith line. If that is indeed what the judge meant, we find ourselves unable to agree.

An illegitimate child being *nullius filius,* no independent act of a putative father can answer the all-important question of what illicit union resulted in conception. Only the mother of such a child could, legally, or with any amount of certainty or reasonableness, designate the man whose carnal association with her resulted in the physical condition out of which her bastard child was born. And so our law requires that, in order to legalize the birth of an illegitimate child, the mother must swear upon affidavit that John Brown is the father of her child. Only upon petition backed by such an affidavit of the mother, would a judge in the probate court be authorized to issue a decree of legitimation. Only then would such a child's advent into the world be regularized, so as to enable society to accept it. Only then could such a child be legally entitled to the same rights and benefits as children born in wedlock. This practice of our political society goes back to Biblical times; for in the Eleventh Chapter of the Book of Judges it is written in the second verse:

> "Thou shalt not inherit in our father's house; for thou art the son of a strange woman."

The only other means of correcting the births of such children known to our law, is where the putative father and the mother of the child married after the child's birth.

(See *Prout* v. *Cooper*, 5 L.L.R. 412 [1937]). But when an attempt was made to raise this question on cross-examination during the trial, objections were interposed and sustained.

All students of the law know what effect the issue of illegitimacy of a party can have on a case involving the inheritance of property. Failure to deny or traverse appellant's allegation must be deemed an admission of appellee's lack of heritable blood; and appellee could not thereafter recover under the principle of survivorship without disturbing the vested rights of those who stood in a more secure position. His failure to deny this allegation set forth in the answer established that appellee was a stranger to the Thomas Smith bloodstream. That being so, appellee could not sustain his claim to the property of John T. Richardson on the ground that he was the last surviving heir of Thomas Smith. It was within Toussaint's legal right to have willed his property to a total stranger, no matter by what name he elected to call such stranger in his will. But how could such a devise of Toussaint give such a stranger blood-ties with any of his relatives on his mother's side? Appellee alleged that he is entitled under survivorship based upon blood relationship with the Thomas Smith line; and once taken, that position must be maintained throughout to final determination of the case.

Although the bill for cancellation of the deeds, and all of the record made by appellee in the lower court, was based upon the principle of joint tenancy, the brief which appellee's counsel filed and argued in this Court took the position that the tenth clause of Thomas Smith's will had created an estate in common and not in joint tenancy. We therefore inquired of counsel whether the departure in his brief from the position he had taken and maintained in his pleadings was intentional or inadvertent. To this question, repeatedly put to counsel, no satisfactory answer was returned. In fact, counsel deliberately evaded a di-

rect answer. It should not have been expected that this Court of last resort would have countenanced such a departure. In condemning a similar practice by Counsellor A. B. Ricks, this Court said, in *Smart* v. *Daniels,* 5, L.L.R. 369, 371 (1937):

> "Such practices by some lawyers affect the reputation of the profession and may have a tendency to make the courts of the country appear in a bad light if not promptly checked."

A party's brief must support the position taken by him in his pleadings. Counsel should not in fairness insist upon anything contrary to grounds relied upon in the court below.

Because John T. Richardson is alleged to have requested his widow to hand over all his deeds to his cousin, the appellant, without making a written will to dispose of his property, it was suggested that this method of leaving property might have been intended as a nuncupative will. Great stress was laid on this during the arguments here; but as much as we tried to get counsel to connect any of the circumstances in this case with the legal requirements for a nuncupative will, no clarification of the question was provided. It is our opinion that nuncupative wills: (1) must show that the testator was *in extremis* or in the last stages of critical illness when he orally directed disposition of his property; (2) must have been executed under conditions which rendered it impossible for the testator to have reduced his desire to writing before he died; (3) must have been reduced to writing within a certain number of days after having been expressed; and (4) cannot devise real property, but only bequeath personalty.

It should be clear, therefore, that the various legal requirements necessary to constitute a nuncupative will are absent in this case. It has not been shown that John T. Richardson's request that his deeds be delivered to appellant was made during the illness which occasioned his

death, or at some time previous to such illness; nor has it been shown that any attempt was ever made to reduce his request to writing within the time required by law. And in any event, since this class of wills cannot devise real property, the delivery of the deeds to the appellant could not constitute a conveyance under a nuncupative will.

We now come to consider the main point which forms the basis of this suit. The bill for cancellation alleged that, during appellant's administration of Toussaint L. Richardson's estate, he found a number of deeds belonging to John T. Richardson, for property left to him by his grandfather, Thomas Smith; that appellant fraudulently concealed those deeds and subsequently had the probate court issue administrator's deeds from them in his favor; that the said concealment of the deeds constituted fraud; and that the act of the probate court in issuing administrator's deeds to appellant was therefore wrongful and illegal. And so the bill was filed to cancel these deeds based upon fraud.

According to the record before us, John T. Richardson died intestate and without issue in the County of Montserrado in 1932. His estate was not administered, even though a brother and sister, cotenants with him under their grandfather's will, survived him, and although our probate laws gave anyone interested the right to letters of administration. In 1955, John T. Richardson's widow is alleged to have taken a batch of deeds belonging to her late husband to appellant, his collateral relative, and to have informed him that it was her late husband's request that she should deliver these instruments to him before her death. Upon the receipt of these deeds, it would appear from the record that appellant put John T. Richardson's intestate estate in court for administration some 24 years after John T. Richardson's death and one year after appellant had received the deeds. Said administration continued for more than a year, and until the probate court ordered the estate closed.

We have tried in vain to connect these circumstances with anything which could be regarded as fraudulent. We have examined the procedure adopted in the administration of this intestate estate and have not found that it is contrary to what should have been done in the handling of the said estate either by the court or by the administrator. As shown hereinabove, we have referred to the testimony of several witnesses who deposed at the trial in the court of origin; and we are still without evidence of any fraud committed by either the appellant or the administrator.

It is not sufficient that fraud should merely be alleged; the circumstances of the alleged fraud must be stated with particularity and must be affirmatively proved. Our statute provides:

> "In all averments of fraud or mistake the circumstances constituting the fraud or mistake shall be stated with particularity." 1956 Code, tit. 6, § 258 (2).

This Court is on record as upholding the requirement that fraud must be affirmatively proved.

> "Upon an allegation that a party has committed fraud, every species of evidence tending to establish said allegation should be adduced at the trial.
>
> "In the absence of evidence in support of the allegations, the decree of the court in favor of plaintiff will be reversed." *Henrichsen* v. *Moore,* 5 L.L.R. 60 (1936), Syllabi 1 and 2.

In the pleadings, as well as in argument before this bar appellee's counsel maintained that appellant, as co-executor of Toussaint L. Richardson's will, had found and taken into his custody all of the deeds belonging to the appellee, together with other papers left by the late Toussaint L. Richardson, and that it was this collection of documents from which the appellant had taken the deeds, the subject of this case, and concealed them. Besides being clearly contrary to the certificate filed by John T. Richardson's widow, this allegation is also in conflict with the

testimony of several witnesses which we have referred to, *supra.* Now let us see how it agrees with a letter found in the record certified to us from the court below, addressed to John T. Richardson by Frank Stewart, son of Nancy Richardson, widow of Toussaint L. Richardson. The letter says:

> "This is to confirm to you that, immediately after the death of the late T. L. Richardson, the trunk containing his deeds and other documents was delivered by me to Mr. Samuel B. Gabbidon, on the instructions of my late mother, Mrs. Nancy L. Richardson."

It should be remembered that the Samuel B. Gabbidon referred to in this letter, not only was one of the late Toussaint L. Richardson's executors, but is also the father of the appellee, and the attorney-in-fact who filed this bill for the cancellation of the deeds.

A bill in equity to cancel a deed on the ground of fraud must allege with particularity the artifice, deception or cheat employed by the defendant; and these must be proved at the trial in such a manner as to remove the last vestiges of uncertainty concerning the fraud alleged to have been perpetrated. In *Nassre and Saleby* v. *Elias Brothers,* 5 L.L.R. 108 (1936), a similar case of cancellation based upon fraud, a judgment in favor of the plaintiff was reversed on some of the same points which appear herein. In the instant case, although fraud has been alleged: (1) in the acquisition of the deeds of John T. Richardson for property devised by Thomas Smith; (2) in the presentation of those deeds to the probate court, on the ground that they having been the fruit of concealment, the issuance of administrator's deeds thereon was illegal; (3) on the theory that the administration of John T. Richardson's estate, even though ordered by the probate court, was illegal because it was without appellee's knowledge; and (4) that these several acts being fraudulent and illegal, are proper grounds for cancellation of the deeds. Although these allegations have been made, yet nowhere

in the pleadings is anything positively pleaded which could taint any one of these several acts with fraud. And nowhere in the testimony of any of the witnesses who deposed at the trial is there any evidence of concealment, deception, artifice, or cheating in the performance of any one of the several acts enumerated above.

In matters of fraud, there is a strict procedure which the law requires to be observed. Fraudulent transactions, being basically dishonest, must be revealed; and redress against them must be sought at the earliest possible moment after discovery of the fraud. The fact that the victimized party had knowledge of the fraudulent character of the transaction, yet failed to seek redress against it immediately, destroys the weight and effectiveness of the plea of fraud when raised out of reasonable time. This Court has held:

> "In cases of fraud, the party complaining must apply for redress at the earliest convenient moment after the fraudulent character of the transaction comes to his knowledge, or the court will refuse to grant relief." *Page* v. *Jackson,* 2 L.L.R. 77 (1912), Syllabus 2.

The circumstances in the *Page* case, *supra,* are much like those of the present case. In that case, although one of the parties had knowledge of the alteration in a document, but although said alteration was against his interest he failed and neglected to stop its probation and registration, and also neglected for three years to seek cancellation of the said document. Similarly, in the present case, although the deeds in question were probated in May, 1956, these cancellation proceedings were not filed until October 20, 1959—some three years and five months thereafter. The two cases being identical on this point, we are firmly of the opinion that the position of this Court in the *Page* case, *supra,* should have controlled the decision in the present case.

In *Bryant* v. *Harmon,* 12 L.L.R. 405 (1957), this

Court also held that laches will bar a party's recovery in equity when actual knowledge of all the facts surrounding the institution of the suit can be imputed and proved. Appellant having alleged in his answer, as well as in his rejoinder, that appellee is guilty of laches for allowing more than three years to elapse before instituting action based on fraud to cancel the deeds in question, and said plea not having been denied or traversed by appellee, this Court should have given every consideration to appellant's reliance upon laches as a defense.

Thus, in view of the principle of estoppel which we have discussed in this dissenting opinion, as it applies to the two letters jointly addressed by the parties herein to the President of Liberia; and also in view of the inapplicability of the principle of survivorship, as in joint tenancy, upon which the appellee rested his case; and in view of the failure of appellee to deny the allegation of his mother's illegitimacy, which failure constituted an admission that appellant was a stranger to the Thomas Smith bloodstream and therefore unable to inherit from that line, and in view of the patent departure involved in the appellee's reliance upon a ground in conflict with that which he had relied upon in all of his pleadings in the court below, and also in view of the failure of appellee to have proved any acts of fraud committed by appellant in his acquisition of the deeds, and finally, in view of the unreasonable delay of more than three years before appellee filed his bill to cancel, which delay, in keeping with several previous decisions of this Court, should have barred this suit for laches, Mr. Justice Wardsworth and I have dissented from our colleagues' decision, and have withheld our signatures from the judgment herein.