CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

NOVEMBER TERM, 1940.

TOUSSAINT L. RICHARDSON, Appellant, *v.* GEORGE W. STUBBLEFIELD and EDITH COLLINS-JONES, Executor and Executrix of the Estate of the Late DEBORAH F. STUBBLEFIELD, Appellees.

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

Argued April 13, 17, 18, 1939, and November 26, 27, 1940. Decided December 20, 1940.

1. The common law provisions for joint tenancy remain in vogue in this jurisdiction and our courts must in all cases interpret a joint conveyance, unlimited by any qualifying words, as one creating an estate in joint tenancy with its attendant doctrine of survivorship, and not a tenancy in common.
2. To constitute joint tenancy four unities must coexist: These are unities of interest, title, time and possession.
3. Testator is powerless to make devise of land in fee when said testator possesses life estate only; therefore devise is void.

Appellees applied to the lower court for probate of the will of the late Deborah Stubblefield. Appellant filed objections in that court to the probate. The court overruled appellant's objections and admitted the will to probate. On appeal to the Supreme Court, *judgment reversed.*

Anthony Barclay for appellant. *William E. Dennis* and *T. G. Collins* for appellees.

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

Unto Robert B. and Maria A. E. Richardson were born three children in the following order: John T.; Deborah F., the application to probate the last will and testament of whom has led to the present litigation; and Toussaint L., the objector who opposes the probate of said will and is the appellant at this bar. The first vacant chair in this compact little family circle was that left when the paterfamilias died intestate on a date not stated in the record before us.

It would appear that sometime afterwards, between the twentieth day of May and the fifth day of October, 1914, the materfamilias went to rejoin her departed husband in the regions beyond the grave, leaving behind a last will and testament executed on the former date and admitted to probate on that last named date. And it is important for us to record here that the estate which the late Mrs. Richardson disposed of in said will had devolved upon her as the principal devisee and residuary legatee of the estate of her father Thomas Smith.

When the curtain again arises upon what has developed into an interesting little legal drama, we find Deborah F. Richardson, now deceased wife of George W. Stubblefield, herself gone to rest, also leaving a last will and testament behind her. Upon the application to probate of the said last will and testament this litigation was commenced.

On the fourth of August, 1938, the youngest member of the family, Toussaint, in pursuance of a caveat he had filed on July 25, filed formal objections to the probate of the last will and testament of his sister aforesaid. Pleadings against and in support of said objections went as far as the rejoinder when, on August 31, the said objections

were withdrawn and amended objections filed in lieu thereof. These also progressed to the rejoinder and the issues raised in these amended pleadings were the issues which came on for trial in the Circuit Court of the First Judicial Circuit before His Honor Nete-Sie Brownell, judge presiding in the month of January, 1939.

Another remark in passing is that to the three Richardson children named in the first part of this opinion had come two different sets of property from two separate and distinct sources: that from their father who had died intestate, and that from their mother as devisee of her father Thomas Smith.

The principal contention in this case, as correctly epitomized by the trial judge, turns upon whether or not that property which was formerly their maternal grandfather's devolved upon the three Richardsons as joint tenants or as tenants in common.

To correctly decide this question we have to go back to the last will and testament of Thomas Smith, the last purchaser, the relevant portion of which reads:

> "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."

Modern writers on real property all agree that there is a difference between the English and American rule on the subject of joint tenancy and tenancy in common. Washburn, in the first volume of his treatise on real property, puts it thus:

"By the common law, in England, if an estate is conveyed to two or more persons without indicating how the same is to be held, it will be understood to be in joint-tenancy. Contrary to the English rule, the policy of the American law is opposed to the notion of survivorship, and if an estate is conveyed to two or more persons without indicating how it is to be held, it will be presumed to be a tenancy in common. In many of the States the rule of survivorship is abolished by statute, except in the case of joint trustees or mortgagees, while in others all estates to two or more persons are taken to be tenancies in common, unless expressly declared to be joint-tenancies by the deed or instrument creating them, with a similar exception of estates to joint trustees or mortgagees." 1 Washburn, The American Law of Real Property 530 (6th ed. 1902).

The first question for us to decide is which of the two rules should be our guide. Our own Supreme Court in the year 1896 in the case *Williams* v. *Young,* 1 L.L.R. 293, unmistakably followed the English rule in its entirety. The learned judge of the trial court, commenting upon the two rules and the decision above referred to, seemed inclined to brush aside the rule, which he referred to as outmoded, and to recommend legislation that would be more in line with the modern trend of opinion in the United States. And it is significant that although he does not expressly give that suggestion as authority, he, nevertheless, in this case decided against joint tenancy. Be the American rule as it may, courts of justice have to deal with the existing law; and the law on this subject in this country today undoubtedly supports the English rule followed by our Supreme Court in the case just cited. According to *Cyclopedia of Law and Procedure:*

"The ancient English law was apt in its constructions of conveyances to favor joint tenancy rather than tenancy in common; and where an estate was con-

veyed to two or more persons without any words indicating an intention that it should be divided among them it was construed to be a joint tenancy. Joint tenancies, however, for a long period of time have been and still are regarded with so little favor in England and in this country, both in courts of law and of equity, that whenever the expressions in a conveyance will import an intention in favor of a tenancy in common, such effect will be given to them. But notwithstanding this tendency of the courts, in the absence of statute a conveyance to several persons will still be construed to be a joint tenancy where there is no expression or words in the instrument creating it indicating an intention that the estate shall be divided." 23 Cyc. of Law & Proc. *Joint Tenancy* 485 (1906).

Our own statute adopting a civil code of laws for this Republic provides:

"Sec. 1. That so much of the seventh Section of an Act entitled, 'An Act defining certain Crimes, and relating to the punishment of Crimes' as reads:- 'Such parts of the Common law set forth in Blackstone's Commentaries as may be applicable to the situation of the people; except as changed by the laws now in force, and such as may hereafter be enacted shall be the civil code of laws for the Republic'—be so altered and amended as to read—that, Blackstone's Commentaries, as revised and modified by Chitty or Wendell, and the works referred to as the sources of Municipal or Common law in Kent's commentaries on American law, volume first—shall be the civil and criminal code of laws for the Republic of Liberia; except such parts as may be changed by the laws now in force, and such as may hereafter be enacted: And all laws or parts of laws conflicting with the provisions of this Act be, and the same are hereby, repealed." L. 1860, 72 (4th) § 1.

This Court commenting upon this statute in the case

Roberts v. *Roberts,* 1 L.L.R. 107 (1878), made the following observations:

> "Here is an adoption not only of the common law as set forth in Blackstone's Commentaries as in the previous act amended by this, but of the whole of those Commentaries as revised and modified by the writers named in the act. The statutes embraced in those Commentaries, where they remain unchanged by laws now in force, have thus been adopted as laws of this Republic. . . .
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> "Kent in his Commentaries, Vol. 1, in giving an account of the sources of the common law to the American people, makes this statement: 'It is also the established doctrine that English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country.' (See page 473.)
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> "These statutes, being one of the sources of the common law referred to by him, have been incorporated by that act of the Legislature within our laws. As to the wisdom, policy or expediency of adopting these statutes as a whole, or of the works referred to in Kent, as sources both of the municipal and common law, and incorporating them as laws of the Republic, the court has nothing to do; these are matters of legislative deliberation and cognizance. . . ." *Id.* at 112.

And so long as the statute quoted remains unrepealed, as undoubtedly it does, and the comment made in the aforesaid case is not recalled by a subsequent decision of this Court, our courts must in all proper cases interpret a joint conveyance, unlimited by any qualifying words, as one creating an estate in joint tenancy, with its attendant doctrine of survivorship, and not as a tenancy in common.

But, nevertheless, there are two reasons why, although we uphold the doctrine that generally speaking the common law provisions for joint tenancy remain in force in

this jurisdiction until this day, we unhesitatingly affirm that in the case at bar no joint tenancy was created by the terms of the will we have before us for consideration.

The first of these reasons is that to constitute a joint tenancy four unities must co-exist in the plurality of persons who claim as such, and these unities are the unities of interest, title, time, and possession. 2 Blackstone, Commentaries *180; 7 R.C.L. *Joint Tenants* § 3, at 811 (1915). Obviously two of these were lacking in the case under review. In the first place, as has been seen from the section of the will quoted, Maria Richardson was given but a life estate, while her three children were evidently intended to enjoy the two-thirds of the remainder devised to them as a freehold estate of inheritance; and this destroyed, of course, the unity of interest. Then, as the life estate vested in Maria Richardson immediately after the death of Thomas Smith and not in the children until after the death of Maria A. Richardson, their mother, that made manifest that there was no unity of time. In the absence of these two unities, or in the absence of either of them, there cannot be, and never could be, an estate in joint tenancy.

Another cogent reason why we have to decide against joint tenancy in this case is the reason pointed out by the trial judge. In that clause of the will under construction the testator said, as we must now reiterate, "[W]hatever 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. . . ." During the argument here, the attention of counsel for appellant was directed to the second word "divided" in the partial sentence just quoted but, although he admitted having noticed it, he evinced a disposition to minimize its importance. All law writers agree that the very idea of a division is incompatible with joint tenancy, for in that species of tenure each joint tenant is supposed to be seized *per my et per tout,* or, in

other words, each joint tenant has a right to each and every sprig of grass, each and every pod of soil. 2 Blackstone, Commentaries *182.

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.

One of the most pertinent authorities we have been able to find in support of the view herein expressed is the case *Brant* v. *Virginia Coal & Iron Co.*, 93 U.S. 326, 93 S. Ct. 927 (1876). Mr. Justice Field speaking for the Court in that case said:

> "In April, 1831, Robert Sinclair, of Hampshire County, Va., died, leaving a widow and eight surviving children. He was, at the time of his death, possessed of some personal property, and the real property in controversy, consisting of one hundred and ten acres. By his last will and testament he made the following devise: 'I give and bequeath to my beloved wife, Nancy Sinclair, all my estate, both real and personal; that is to say, all my lands, cattle, horses, sheep, farming utensils, household and kitchen furniture, with everything that I possess, to have and to hold during her life, and to do with as she sees proper before her death.' The will was duly probated in the proper county.
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> "In July, 1839, the widow, for the consideration of $1,100, executed a deed to the Union Potomac Company, a corporation created under the laws of Virginia, of the real property thus devised to her, describing it as the tract or parcel on which she then resided, and the same which was conveyed to her 'by the last

will and testament of her late husband.' As security for the payment of the consideration, she took at the time from the company its bond and a mortgage upon the property. The mortgage described the property as the tract of land which had on that day been conveyed by her to the Union Potomac Company.

"In 1854 this bond and mortgage were assigned to the complainant and Hector Sinclair, the latter a son of the widow, in consideration of $100 cash, and the yearly payment of the like sum during her life. Previous to this time, Brant and Hector Sinclair had purchased the interest of all the other heirs, except Jane Sinclair, who was at the time, and still is, an idiot, or an insane person; and such purchase is recited in the assignment, as is also the previous conveyance of a life interest to the company.

"In July, 1857, these parties instituted suit for the foreclosure of the mortgage and sale of the property. The bill described the property as a tract of valuable coal land which the company had purchased of the widow, and prayed for the sale of the estate purchased. Copies of the deed of the widow and of the mortgage of the company were annexed to the bill. In due course of proceedings a decree was obtained directing a sale, by commissioners appointed for that purpose, of the property, describing it as 'the lands in the bill and proceedings mentioned,' if certain payments were not made within a designated period. The payments not being made, the commissioners, in December, 1958, sold the mortgaged property to one Patrick Hammill, who thus succeeded to all the rights of the Union Potomac Company.

"The defendant corporation, the Virginia Coal and Iron Company, derive their title and interest in the premises by sundry mesne conveyances from Hammill, and in 1867 went into their possession. Since then it has cut down a large amount of valuable tim-

ber, and has engaged in mining and extracting coal from the land, and disposing of it.

"Brant, having acquired the interest of Hector Sinclair, brought the present suit to restrain the company from mining and extracting coal from the land, and to compel an accounting for the timber cut and the coal taken and converted to its use.

. . . . . .

"The disposition of the case depends upon the construction given to the devise of Robert Sinclair to his widow, and the operation of the foreclosure proceedings as an estoppel upon the complainant from asserting title to the property.

"The complainant contends that the widow took a life-estate in the property, with only such power as a life-tenant can have, and that her conveyance, therefore, carried no greater interest to the Union Potomac Company. The defendant corporation, on the other hand, insists, that, with the life estate, the widow took full power to dispose of the property absolutely, and that her conveyance accordingly passed the fee.

"We are of opinion that the position taken by the complainant is the correct one. The interest conveyed by the devise to the widow was only a life-estate. The language used admits of no other conclusion; and the accompanying words, 'to do with as she sees proper before her death,' only conferred power to deal with the property in such manner as she might choose, consistently with that estate, and, perhaps, without liability for waste committed. These words, used in connection with a conveyance of a leasehold estate, would never be understood as conferring a power to sell the property so as to pass a greater estate. Whatever power of disposal the words confer is limited by the estate with which they are connected.

"In the case of *Bradley* v. *Westcott,* reported in the 13th of Vesey, the testator gave all his personal estate to his wife for her sole use for life, to be at her full, free, and absolute disposal and disposition during life; and the court held, that, as the testator had given in express terms an interest for life, the ambiguous words afterwards thrown in could not extend that interest to the absolute property. 'I must construe,' said the Master of the Rolls, 'the subsequent words with reference to the express interest for life previously given, that she is to have as full, free, and absolute disposition as a tenant for life can have.'

"In *Smith* v. *Bell,* reported in the 6th of Peters, the testator gave all his personal estate, after certain payments, to his wife, 'to and for her own use and disposal absolutely,' with a provision that the remainder after her decease should go to his son. The court held that the latter clause qualified the former, and showed that the wife only took a life-estate. In construing the language of the devise, Chief Justice Marshall, after observing that the operation of the words 'to and for her own use and benefit and disposal absolutely,' annexed to the bequest, standing alone, could not be questioned, said: 'But suppose the testator had added the words "during her natural life," these words would have restrained those which preceded them, and have limited the use and benefit, and the absolute disposal given by the prior words, to the use and benefit and to a disposal for the life of the wife. The words, then, are susceptible of such limitation. It may be imposed on them by other words. Even the words "disposal absolutely" may have their character qualified by restraining words connected with and explaining them, to mean such absolute disposal as a tenant for life may make.'

"The Chief Justice then proceeded to show that other equivalent words might be used, equally mani-

festing the intent of the testator to restrain the estate of the wife to her life, and that the words, 'devising a remainder to the son,' were thus equivalent.

"In *Boyd* v. *Strahan,* 36 Ill. 355, there was a bequest to the wife of all the personal property of the testator not otherwise disposed of, 'to be at her own disposal, and for her own proper use and benefit during her natural life;' and the court held that the words 'during her natural life' so qualified the power of disposal, as to make it mean such disposal as a tenant for life could make.

"Numerous other cases to the same purport might be cited. They all show, that where a power of disposal accompanies a bequest or devise of a life-estate, the power is limited to such disposition as a tenant for life can make, unless there are other words clearly indicating that a larger power was intended." *Id.* at 327–34.

And now we come to that part of the property which descended to the three Richardsons on the paternal side.

On the death of Robert B. Richardson, intestate, his property descended to his three children aforesaid as an estate in coparcenary, and each was therefore entitled to one-third of the whole.

It was suggested in the argument of counsel for appellees that John T. Richardson subsequently died intestate and without heirs and that therefore his one-third interest should be divided between Deborah and Toussaint, thus giving each of them one-half of the whole. As this phase of the question was not passed upon in the trial court, nor, as far as we can see, even raised in said court, it does not appear to us to be properly before us for review, and hence we do not feel ourselves called upon to make any comment thereon.

Summing up, it is our opinion that inasmuch as the late Maria Richardson intended to devise lands which had only been given to her for life, the devise was ineffec-

tive and therefore void. Hence, the part of the will of the late Deborah F. Stubblefield which attempts to dispose of the fee of any of her maternal grandfather's property, in which she had only a life estate that determined at her death, was illegal; and her will, therefore, in regard to the property on the maternal side, should not, in our opinion, be admitted to probate.

As to the disposition in her will of that property descended from her father, it is our opinion that she was only entitled to one of the three portions of the estate, and an attempt to devise in fee any part of said estate without reference to the shares of her brothers was also ineffective and void. It follows, then, that the will before us cannot legally be admitted to probate, and hence the judgment of the court below should be reversed and appellees ruled to pay all costs; and it is hereby so ordered.

Reversed.