

JOHN W. PRITCHARD, Appellant, v. MALINDA PARKER
et al., Appellees.

ARGUED NOVEMBER TERM, 1922. DECIDED NOVEMBER TERM, 1922.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. Unless a statute shall have been enacted to the contrary the common law of England in so far as applicable to our condition became by virtue of an Act passed by the Legislature in the early days of the Republic, and printed on pages 72-3 of the compilation of 1857-61, the basis of our jurisprudence.
2. In considering whether or not the principle of tenancy by the curtesy of England is applicable to our condition one must consider: 1. The condition of women under the common law of England prior to the Declaration of Independence; 2. Rights in the property of a wife which the husband acquired under the common law; 3. The growth of a more liberal policy with respect to property acquired by the wife independent of her husband.
3. Formerly the civil existence of a wife was completely merged in that of the husband leaving her under several civil disabilities; but with the growth in England and sundry states of the United States of America of a more liberal policy statutes were enacted to give effect to these more liberal views.
4. The giving to married women by the Constitution of Liberia of the control of such property as they may possess otherwise than through him, which property can not be made chargeable for his debts nor alienated otherwise than by her free and voluntary consent, is evidence of the adoption by the people of Liberia of those more liberal views.
5. Although statutes in derogation of the common law are to be considered strictly, in Liberia a rule laid down by the Supreme Court of New York will be followed to the effect that enactments enlarging the rights of dominion of married women over their property will be liberally construed.

Mr. Justice Johnson delivered the opinion of the court:

In re the estate of E. Ray Pritchard. Objection to petition to place next of kin in possession of said estate. The petition above mentioned was filed in the Probate Division of the Circuit Court, first judicial circuit, Montserrado County, by Malinda Parker, Jessena Hill by and through her husband, Solomon Hill, Jr., and read substantially as follows:

1. That Mrs. E. Ray Pritchard, of the City of Monrovia, died intestate sometime in the month of April, A. D. 1919, in the territorial waters of Grand Cape Mount, Montserrado County.
2. That the said E. Ray Pritchard left a considerable estate in real property, situated in Montserrado County, and in the City of Monrovia, together with rents, and also other personal

property in the said city and in the Brown Shipley Bank of England.

3. That the said property, both real and personal, came into decedent's possession by purchase, and at her death she left no inheritable issue.

4. That the said E. Ray Pritchard, at her death, left two sisters, namely: Malinda Parker and Jessena Hill, the petitioners in this petition, who are the only next of kin.

That after the death of decedent aforesaid, a will was offered in the Probate Division of this court, Circuit Court, first judicial circuit, Montserrado County, by John W. Pritchard her husband for probate; but upon the objection of the petitioners the purported will, was at the August term of the said Circuit Court, A. D. 1921, set aside by the verdict of the petit jury for fraud, and a judgment rendered upon said verdict, declaring the purported will aforesaid, illegal, void and of no effect; the petitioners therefore prayed that in consequence of the said judgment, the judge of the said court would order that the petitioners being the only next of kin aforesaid, they be placed in possession of all the estate of the said E. Ray Pritchard, deceased. Objections were filed to the said petition by said John W. Pritchard, of the following tenor:

1. That the said objector, at the time of the death of the said E. Ray Pritchard, was her lawful husband having married her in the year 1912, that they the objector and decedent lived together in wedlock seven years, and had issue of said marriage four children, all of whom were born alive, and survived until drowned at sea at the same time with their mother the decedent in the month of April, 1919.

2. That the said E. Ray Pritchard, objector's wife, during coverture was owner in fee and coparcenary, of several parcels of real estate in Montserrado County, among which was lot number 303, Front Street, Monrovia.

3. That by virtue of being her lawful husband, at the time of the death of the said E. Ray Pritchard, and of the fact that there were issues of the marriage born alive, he is by the law of Liberia, entitled to hold and enjoy said real estate of his said wife for the term of his natural life as tenant by the curtesy of England.

Counsel for petitioners prayed the court not to sustain the objections of objectors:

1. Because the court has no jurisdiction to disunite the possession of this estate, without a bill of partition in equity,

nor to admit John A. Pritchard as tenant by the curtesy of England.

2. Because the estate of the decedent is an estate in joint tenancy.

3. Because the title of objector is defective and bad in that the decedent having acquired the property by purchase, her issue if alive, could not claim by descent only, but by purchase.

4. And also because the Legislature having in the year 1904, regulated the manner in which and the person to whom intestate estate shall descend; the common law rule applicable to tenants by the curtesy of England has, in Liberia, become null and void, and of no legal effect.

On the trial of the case in the court below judgment was given in favor of the petitioners; the court decreeing, *inter alia*, that the estate of the decedent be placed in the hands of the surviving heirs of the late R. H. Jackson, as per application made to said court. To this decree, objectors filed exceptions and prayed an appeal to this court. On the hearing of the case at the November term of this court, A. D. 1922, the judgment of the court below was sustained, but the opinion was reserved. We will now proceed to discuss the subject of "tenancy by the curtesy of England" and consider whether it forms a part of the common law adopted by the Legislature of Liberia.

An Act was passed by the National Legislature in the early days of the Republic entitled an "Act defining certain crimes, and relating to the punishment of crimes," which reads as follows:

"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 of the Republic." (See Lib. Stat., Old Blue Book, under Judiciary, art. VI, p. 126, sec. 7.)

Subsequently this Act was so altered and amended to read as follows:

"Blackstone's Commentaries as revised and modified by Chitty or Wendell, and the works referred to as the sources of the municipal or common law, in Kent's Commentaries on American Law, volume I, 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." (See Acts Leg. Lib., 1857-61, pp. 72-3.)

The great body of the common law of England became therefore, as far as applicable to our condition, the basis of our jurisprudence, it being understood that wherever there existed, or should afterwards be enacted, statutes in derogation of the common law, the provisions of the statute should prevail over those of the common law. In discussing the question whether or not that portion of the common law which relates to tenancy by the curtesy has been embodied in our system of laws, three things are to be taken into consideration:

1. The condition of women, under the common law of England, prior to the declaration of our independence.
2. Rights which the husband acquires under the common law, in the property of his wife; and
3. The growth of a more liberal policy with respect to property acquired by the wife, independent of the husband.

Formerly the civil existence of the wife was completely merged in that of her husband, she could not carry on business without the consent of her husband no matter what wealth or property she possessed; she could make no contract with respect to her separate property, because the husband acquired an interest in that property which entitled him to alienate same, or in case of his bankruptcy, it would vest in his assignee for the benefit of his creditors, in many cases leaving her and her children entirely destitute. Gradually a more liberal sentiment in favor of the wife grew up in England and in a majority of the United States of America. Statutes were enacted giving to married women certain rights in respect to their separate property and enabling them to carry on business. The framers of our Constitution shared these advanced views, and embodied in said Constitution the following provision:

"The property of which a woman may be possessed at the time of her marriage, and also that of which she may afterwards become possessed, otherwise than by her husband, shall not be held responsible for his debts; whether contracted before or after marriage.

"Nor shall the property thus intended to be secured to the woman be alienated otherwise than by her free and voluntary consent, and

such alienation may be made by her either by sale, devise or otherwise." (See Const. Lib., art. V, sec. 10.)

In the year 1904, an Act entitled "An Act amending the law on descent" was passed by the National Legislature, which reads as follows:

"That after the passage of this Act, any citizen of Liberia dying intestate, and without heirs or collaterals and leaving property real or personal or both, said property shall go to parents of deceased in equal proportion, and from them to the heirs of the heirs of the parents from whom the owner of the property descended, and in case of death of the parents, before the death of the intestate, the said property shall vest in the heirs of the parents in his or her stead."

Now it is obvious that were we to admit that the common principle relating to tenancy by curtesy formed a part of the laws of Liberia, both the constitutional provision above cited and the Act of 1904, so far as it relates to the estate of married women would be defeated, and rendered of no effect.

Sedgwick in his notes on the subject of statutes in derogation of the common law makes the following observation:

"There has been great conflict as to the rule of construction which should be applied to the statutes altering the legal status of married women, and giving them additional power over their property; some courts, because these statutes change the common law, have said that they should be construed strictly, and not extended beyond the letter."

Thus in a case heard and determined before the Supreme Court of New York, that court held that the Acts "Authorizing married women to contract in relation to their separate estate, and to sue and be sued are to be construed strictly, and to refer to and recognize such form of contracts only, and such kinds of remedies as were in existence and legal in respect to such persons and their property, at the time the statutes were passed." It is very plain that this decision nullified the statutes, for it virtually said that after all its labor, and notwithstanding the strong expressions it had enacted, the Legislature had simply left the law as to married women's contracts and the remedies to enforce them exactly where it was when the statute was passed. On appeal the court of appeal held that the statutes were to be construed liberally, as remedial statutes according to their fair intent.

The decision of the Supreme Court of New York is cited, because it illustrates in a striking manner how an application of the rule that statutes in derogation of the common law are to be construed strictly, may override positive mandates of the Legislature and destroy a highly remedial measure, the intent and general object of which were as clear as could be made by appropriate language. In view of the foregoing, we are of the opinion that the judgment of the court below should be affirmed; and it is so ordered.

Arthur Barclay, for appellant.

Abayomi Karna, for appellee.

C. VAN HEUSDEN, Head Agent of the Oost Afrikaansche Compagnie in Liberia, Appellant, *v.* WALTER F. WALKER, Appellee.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. Counsel for appellant, defendant in the court below, having in his brief admitted that the law points he raised in the case were voluntarily waived at the trial, neither in this court nor in the court below was it within the power of the court to consider them.
2. It is not error in the judge of a trial court to refuse to instruct the jury upon a point of law withdrawn from the consideration of the court by a waiver of the pleadings.
3. For A to make an agreement with B, and then make difficulties and put obstacles in the way of his carrying out those stipulations he had undertaken to perform, is an injury for which an action of damages will lie, especially when A makes it possible for C to reap the advantages which but for his actions B would have secured.
4. When A shall have put obstacles in the way of B's performing his part of a contract and given C the opportunity of so doing he accepting whatever benefit accrued therefrom, he is estopped from attributing blame to B.
5. The taking of depositions is in derogation of the common law, and hence the statute must be strictly followed.
6. Should the necessity therefor arise application should be made to the judge of the court in which they are intended to be used, and a commission to take the depositions obtained without which they are inadmissible.

Mr. Chief Justice Dossen delivered the opinion of the court:
Action of Damages for Violation of Contract. This case is be-