

thereby deprive the jury of an opportunity to pass upon those facts.

Moreover, it was also gross error for the judge to have dismissed the answer of the defendant and at the same time receive in evidence and mark defendant's title deed which had been annexed to and formed a part of the said answer. How could the judge consistently dismiss the pleading and retain in the case a part of the same pleading? How was the jury to determine the relevance of the defendant's deed, when the pleading which had introduced it was withheld from the jury? In *Walker v. Morris*, 15 LLR 424, 429 (1963), which the judge relied on in admitting the deed after dismissing the answer, the Supreme Court took the view that exhibits to pleadings were part of the said pleadings.

“It is a rule of modern practice that when a pleading is founded on a written instrument a copy thereof may be annexed and made a part of the pleading by reference as an exhibit, and by statute or rule of court, it is sometimes made obligatory on the pleader in such a case to annex a copy of the instrument to the pleading.” 21 R.C.L., 475, *Pleading*, § 39.”

The judge therefore, erred when he dismissed the defendant's answer in ejectment; and he erred again when he received and marked the deed, which was part of the answer, after dismissing the answer.

In view of the foregoing, we have no alternative but to reverse the judgment and remand the case to the trial court for the issues of law to be properly passed upon and for trial by jury thereafter, costs to abide final determination. And it is so ordered.

*Reversed and remanded.*

In re THE ESTATE OF LLOYD K. WHISNANT,  
Deceased.

APPEAL FROM THE MONTHLY AND PROBATE COURT,  
MONTSERRADO COUNTY.

Argued May 15, 1975. Decided June 26, 1975.

1. A conveyance to husband and wife creates a tenancy by the entirety with the right of survivorship.
2. However, when an absolute divorce is obtained, the tenancy by the entirety is automatically converted to a tenancy in common, with no right of survivorship.

The former wife of decedant laid claim to the estate, maintaining the property had been acquired by them before their divorce, resulting in a tenancy by the entirety and passing to her on the death of her former spouse.

The widow of deceased claimed the tenancy by the entirety had terminated upon the divorce and resulted in a tenancy in common. The lower court ruled that the property at the time of death was a joint tenancy, passing to the former wife at the time of decedent's death. An appeal was taken from the ruling.

The Supreme Court ruled that a tenancy by the entirety after an absolute divorce automatically converts to a tenancy in common without right of survivorship. The ruling was *reversed*.

*Toye C. Barnard* for appellant. *M. Fahnbulleh Jones* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

This case emanates from the Monthly and Probate Court of Montserrado County, based upon a letter written by the Morgan, Grimes and Harmon law firm to Hon. Charles H. D. Simpson, in behalf of their clients, Mrs.

Veda Whisnant-Farrell and her mother, Catherine Johnson. The letter is set forth.

“February 19, 1971

“Hon. Charles H. D. Simpson  
Commissioner of Probate  
Montserrado County  
Monthly & Probate Court  
Temple of Justice, Monrovia  
“May It Please Your Honor:

“In the interest of our clients, Mrs. Veda Whisnant-Farrell and her mother, Mrs. Catherine Johnson, we have been instructed to submit the following facts and application for the favorable consideration of this court, to wit:

“1. That during the marriage of Mrs. Catherine Johnson to the late Honorable Lloyd K. Whisnant they acquired certain real and personal property; (some of which they held in joint tenancy has by operation of law come to Mrs. Johnson), however some of the original deeds are still in possession of the Administrators of Honorable Whisnant's estate. Mrs. Johnson would like to request the court to order the Administrators to deliver all such deeds to her.

“2. Mrs. Veda Whisnant-Farrell is the daughter born unto the said Catherine Johnson and Lloyd K. Whisnant and is one of the heirs of the said Lloyd K. Whisnant. Because Mrs. Farrell is at present out of Liberia she has authorized her mother, Mrs. Catherine Johnson, to represent her interest in all matters in Liberia and especially those relating to her share in her father's estate. This authority, therefore, makes it necessary that Mrs. Johnson be permitted to associate with the Administrators appointed by the Monthly & Probate Court to administer the estate of the said late Lloyd K. Whisnant, especially in respect to disposition of the properties of said estate.

“We, therefore, on behalf of our clients, respect-

fully request that Mrs. Catherine Johnson be issued the necessary letters of Administration to associate with the other Administrators appointed by the court for the purposes stated supra.

“Respectfully submitted :

“MORGAN, GRIMES, & HARMON,  
*Counsellors-at-law.*”

In resisting the request of the letter, counsel for Mrs. Rosemarie Whisnant, the surviving widow of deceased, noted the following for the record on March 30, 1971.

“1. Counsel for Mrs. Whisnant respectfully submits that the letter dated February 19, 1971, over the signature of Counsellor Lawrence A. Morgan of the Morgan, Grimes and Harmon law firm, was sent to Mrs. Rosemarie Whisnant by this court. In view of this letter we wish to spread the following submission upon the records of this court.

“2. With respect to count one of said letter in which Mrs. Catherine Johnson claims to have held certain real and personal property in joint tenancy with the late Lloyd K. Whisnant and therefore the said property comes to Mrs. Johnson by operation of law, we respectfully say that under the law properties held by husband and wife are held as tenants by the entirety, but this tenancy is destroyed when there is an absolute divorce between the husband and wife. If at all Mrs. Catherine Johnson and the late Lloyd K. Whisnant held any real property as tenants by the entirety then the fact that they were divorced prior to his death, the unity of husband and wife was destroyed and therefore Mrs. Catherine Johnson and the late Lloyd K. Whisnant could have been at most tenants in common and not joint tenants.

“3. We further submit that the property which Mrs. Catherine Johnson claims to hold in joint tenancy with the late Lloyd K. Whisnant has not been

sufficiently identified or described so as to give this court notice to pass thereupon.

"4. With respect to the second count in Counsellor Morgan's letter in which Mrs. Catherine Johnson says that she has been authorized by her daughter, Mrs. Veda Whisnant-Farrell, to represent her interest in the estate, said letter should have been accompanied by a copy of the letter of authorization or a power of attorney from Mrs. Veda Whisnant-Farrell, especially so, since Mrs. Farrell is of mature age and capable of issuing a power of attorney to whomever she chooses.

"5. We respectfully submit further that in keeping with the practice invoked before this court any party moving this court for letters of administration is under the law required to file a regular petition before this court which is supposed to be passed upon by this court and not a mere letter signed by the counsel of the petitioner unverified by a Justice of the Peace.

"In view of the foregoing we respectfully pray this Honorable Court not to entertain the letter submitted by counsel from the Morgan, Grimes & Harmon law firm and to dismiss count one of said letter."

In ruling on the letter of request and resistance in the concluding part of his said ruling the judge said:

"In view of the premises, and in view of what is hereinabove expressed, it is the considered opinion of the court that the position taken and the legal contention raised by opposing counsel in this case is not sufficiently, coherently and strictly in accordance with the law controlling. Mrs. Catherine Johnson, former wife of the late Lloyd Kelly Whisnant, being the last survivor, becomes the sole and unqualified owner of the joint tenancy."

To this ruling appellant noted an exception and announced an appeal to this Court.

The bill of exceptions is substantially similar to the above-quoted matter placed by counsel in the record.

In summarizing the contentions advanced in the bill of exceptions, counsel for appellant argued: (a) that Mrs. Johnson and the late Lloyd K. Whisnant bought certain real and personal properties in joint tenancy. Therefore, by operation of law, her co-tenant having died, Mrs. Johnson is the sole owner of the fee under the doctrine of survivorship; (b) that counsel for the widow of the late Lloyd Whisnant resisted that, under the law, properties held by husband and wife are held as tenant by the entirety, but this tenancy is destroyed when there is an absolute divorce between the husband and wife; (c) that Mrs. Johnson having been authorized by her daughter, Mrs. Veda Whisnant-Farrell, to represent her interest in the estate, said letter should have been accompanied by a copy of the letter of authorization or a power of attorney from Mrs. Veda Whisnant-Farrell, especially since Mrs. Farrell is of mature age; (d) that in keeping with the practice in vogue in the lower court any party moving the court for letters of administration is under the law required to file a regular petition before the court, which is supposed to be passed upon by the court. It should not take the form of a mere letter signed by counsel for petitioner and be unverified; (e) objection to the ruling from which an appeal was taken.

Carefully scrutinizing the complaints against the trial judge in this case, we have no alternative but to sustain the bill of exceptions in its entirety.

As indicated, *supra*, we are in full agreement with appellant's contentions stated above. For though joint tenancy was once favored in England for reasons that were feudal in their character and influential in their nature, this has long ceased to operate. Whatever may have been the causes, modern trends show that joint tenancy has undeniably grown in disfavor both in England and America. Even in England, where a little favor is

still given to joint tenancy, whenever there are expressions in the conveyance which will import the slightest intention in favor of tenancy in common, such effect will be given both in law and equity.

In accordance with this modern trend, many states in America have passed statutes limiting the existence of a joint tenancy so that in the absence of an express statement to the effect of joint tenancy, a conveyance or devise to two or more persons is presumed to create a tenancy in common. Our law is silent on this point, this being the modern trend of law in foreign jurisdictions.

In the case at bar, we are to consider whether or not the property acquired by the late Lloyd K. Whisnant and his then wife, now Catherine Johnson, is an estate in joint tenancy as contended; from all intents and purposes this is rather a unique situation of a conveyance to husband and wife as revealed by the record in this case.

This issue is for the first time being raised to be resolved by this Court, and as such we have no alternative but to resort to authority.

“An estate by the entirety is the estate created at common law by a conveyance or devise of property to husband and wife. Under such a conveyance or devise, the husband and wife, by reason of their legal unity by marriage, take the whole estate as a single person with the right of survivorship as an incident, so that if one dies the entire estate belongs to the other by virtue of the title originally vested. The estate conveyed, whether for life or for years, is held by them as a whole and not by moieties—per tout and not per my—with unities of time, title, interest, and possession. Except as the time of the estate may be limited by the instrument creating it, it is held by husband and wife together so long as both live, unless the marriage relation is dissolved by judicial decree.” 41 AM. JUR., 2d, *Husband and Wife*, § 55 (1968).

The conveyance or devise in the case at bar being one

to husband and wife definitely created a tenancy by the entirety with the right of survivorship; however there having been a *divorce a vinculo matrimonii* (an absolute divorce), that tenancy by the entirety is automatically converted to a tenancy in common. We must note here that though courts are in conflict as to the effect of an absolute divorce on an estate by the entirety, it is generally held that such divorce destroys the unity of the spouses and consequently destroys the unity of seisin in estates by the entirety. We herein fully adhere to the general rule controlling estates by the entirety. Tenancy in common is thus the only tenancy which has the characteristics congruent to that created as the result of the absolute divorce of appellee and Lloyd K. Whisnant prior to his death.

In his argument counsel for appellant contended that the estate in question was not purchased by Lloyd K. Whisnant and Catherine Johnson-Whisnant as husband and wife; but that said property was purchased in their individual names, that is to say, Lloyd K. Whisnant and Catherine Johnson-Whisnant; therefore, the estate could not be considered as an estate in the entirety but instead as a joint tenancy.

There is authority on the point raised.

“An estate by the entireties arises from a conveyance or devise to husband and wife, though the deed, will, or other instrument does not describe them as husband and wife or refer to their marital relationship, and though, at the time of taking, they have no intention in fact as to what technical estate they are taking.”

*Id.*, 858.

Unlike joint tenancy or tenancy by entirety, there is no survivorship in tenancy in common and tenants in common are owners of undivided shares so that when one dies his share passes to his heirs or devisees. The essential unity which characterizes tenancy in common is that of possession or the right to possession of the com-



mon property; if said unity exists there is tenancy in common irrespective of other unities.

Therefore, in view of the foregoing, it is obvious that the ruling of the lower court is not supported by law; in that, by virtue of the absolute divorce between the late Lloyd K. Whisnant and Catherine Johnson, the real property acquired by them, by operation of law, could no longer be held as an estate by the entirety.

The judgment of the lower court is hereby reversed and the property involved is to be held as a tenancy in common, appellee being entitled to one-half of all real property acquired by the late Lloyd K. Whisnant and herself as husband and wife in fee simple, and the estate of Lloyd K. Whisnant being entitled to the remaining half for the benefit of his widow and heirs. Costs disallowed. And it is hereby so ordered.

*Reversed.*