

GARBER v. SAVAGE and MACKEY

Supreme Court (Tew, C.J.): April 11th, 1931

5 [1] Succession — administration of assets — payment of debts — intestate
estates — administrator must obtain consent of those beneficially
entitled, or court order, before selling real property to pay intestate
deceased's debts: The Execution against Real Property Ordinance
(*cap.* 61), s. 3, which provides that the real estate of any deceased person
may be administered for the payment of his debts does not override the
10 provisions of the Intestate Estates Ordinance (*cap.* 104), s. 24 and the
administrator of an intestate estate wishing to sell land forming part of
the estate to meet the deceased's debts, is not therefore relieved of his
obligation to obtain first the consent of the persons beneficially entitled,
or an order of court (page 231, lines 19—37).

15 The plaintiff brought an action to set aside a deed of convey-
ance made between the first and second defendants.

The first defendant was the administrator of an intestate estate
in which the plaintiff had a beneficial interest. The deceased had
left various debts which the first defendant decided to meet by
selling land forming part of the estate. He sold the property to the
20 second defendant without first obtaining either the consent of
those beneficially interested in the estate, or an order of court.

The plaintiff then brought the present proceedings contending
that the deed of conveyance should be set aside since the first
defendant had failed to obtain the consent to the sale of those
25 beneficially interested in the property, or a court order, as
required by the Intestate Estates Ordinance (*cap.* 104), s. 24.

In reply, the first defendant contended that this section did not
apply when an administrator sold property in order to pay the
deceased's debts, since the right to sell in such circumstances was
30 conferred by the Execution against Real Property Ordinance
(*cap.* 61), s. 3, and that the conveyance should not therefore be
set aside.

The court gave judgment for the plaintiff.

35 Legislation construed:

Execution against Real Property Ordinance (Laws of Sierra Leone, 1925,
cap. 61), s. 3:

40 "When any person shall die seised of or entitled to any estate or
interest in lands, tenements, hereditaments or other real estate, which
he shall not by his last will have charged with, or devised subject to,
or for the payment of, his debts, the same shall be assets to be admin-
istered for the payment of all just debts of such person."

Intestate Estates Ordinance (Laws of Sierra Leone, 1925, *cap.* 104), s. 24:
The relevant terms of this section are set out at page 231, lines 12—16.

TEW, C.J.:

This action was brought to set aside a deed of conveyance made
between the defendant Savage, as administrator of the estate of 5
Ibrahim Garber, deceased, and the defendant Mackey, of the land
at Canton Street, Freetown.

No defence was delivered by Mackey and, as against him, the
action was set down on motion for judgment.

Section 24 of the Intestate Estates Ordinance (*cap.* 104) 10
provides that:

“No land passing under this Ordinance shall be sold by the
Curator or any administrator without the consent of all
persons beneficially interested, or the order of the Supreme 15
Court or Judge thereof for that purpose first obtained.”

The defendant Savage denied that the land had been sold
without the consent of the other beneficiaries and pleaded that
he had sold the land in order to defray the debts of the intestate.

I am satisfied that the defendant did not obtain the consent of 20
all the beneficiaries, and it is not denied that he failed to obtain
an order of the court.

It was, however, argued on his behalf that by virtue of s. 3 of
the Execution Against Real Property Ordinance (*cap.* 61), an
Ordinance of a later date than the Intestate Estates Ordinance, 25
the real estate of any deceased person may be administered for
the payment of his debts, and that this provision overruled s. 24
of the latter Ordinance. In my opinion there is no substance in
this argument.

The sole purpose of the Execution Against Real Property 30
Ordinance is to enable real property to be taken in execution in
the same manner as personal property, and it cannot override the
provisions of the Ordinance from which an administrator derives
his authority. How s.3, which has nothing to do with execution,
came to be inserted in this Ordinance, I cannot imagine. It cer- 35
tainly cannot relieve an administrator, who wishes to sell land for
the payment of debts, from the obligation imposed on him by s.24
of the Intestate Estates Ordinance.

The plaintiff must have judgment against both defendants.
The deed of conveyance dated September 27th, 1929, and made 40
between the two defendants is set aside. The plaintiff will have
the costs of this action against both defendants and also, against

the defendant Mackey, the costs of the motion for judgment.
Judgment for the plaintiff.

5 IN THE ESTATE OF PRATT (W.H.) (DECEASED), TURPIN v. JOHNSON
 Supreme Court (Tew, C.J.): April 11th, 1931

10 [1] Land Law — contingent remainders — construction — presumption in
 favour of vested remainders — limitation read as contingent remainder
 only if clearly testator's intention: A limitation in a will should not be
 read as being a contingent remainder unless this clearly appears to be the
 testator's intention and if it admits of being considered as a vested
 remainder it will always be read as such; so when a devise is made to A
 for life and on his death to the heir male of his body, and in default of
 such heir male to the testator's own heir general, the remainder will vest
 15 in the person who is the testator's heir general at the date of the death
 of the testator; when A himself is such person, he will take an estate in
 fee simple (page 235, line 36—page 236, line 7).

20 [2] Land Law — contingent remainders — vesting — remainder to testator's
 heir general vests in person who is heir general at date of testator's
 death unless clearly intended by testator to be contingent remainder:
 See [1] above.

25 [3] Succession — wills — construction — words of limitation — remainder to
 testator's heir general vests in person who is heir general at date of
 testator's death unless clearly intended by testator to be contingent
 remainder: See [1] above.

30 The plaintiff applied to the Supreme Court for the construction
 of a will.

35 The testator devised to his son, and heir-at-law, J.R. Pratt
 certain property "during his natural life and after his death I
 30 devise the same premises unto the heir male of his body and in
 default of such heir male to my own right heir general for ever."

40 J.R. Pratt died intestate leaving a son, W.H. Pratt, Jr., who later
 died intestate and without issue, his mother being administratrix
 of his estate and the defendant in the present proceedings.

45 The plaintiff, who was the grand-daughter of the testator by
 one of his daughters, made the present application asking the
 court to determine the nature of the estate transmitted to
 W.H. Pratt, Jr. on the death of J.R. Pratt, and to state who was
 entitled to the property in question on the death of W.H. Pratt,
 Jr. She contended that she herself was entitled to the property
 since J.R. Pratt took an estate tail with an executory devise of