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

IN THE ESTATE OF PRATT (W.H.) (DECEASED), TURPIN v. JOHNSON

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

[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 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).

[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.

[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.

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

The testator devised to his son, and heir-at-law, J.R. Pratt certain property "during his natural life and after his death I 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."

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.

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

the fee simple to the person who, on the failure of issue of J.R. Pratt, was at that time the heir of the testator.

In reply the defendant contended that as next of kin of the late W.H. Pratt, Jr. she was entitled to the property since the devise over to the heirs of the testator took effect at the date of the testator's death and so J.R. Pratt, being the person who at the time of the testator's death fulfilled the description of the testator's heir general, took the fee simple.

The court gave judgment for the defendant.

Cases referred to:

(1) *Boydell v. Golightly* (1844), 14 Sim. 327; 60 E.R. 384.

(2) *Doe v. Frost* (1820), 3 B. & Ald. 546; 106 E.R. 761, distinguished.

(3) *Doe d. Pilkington v. Spratt* (1833), 5 B. & Ad. 731; 110 E.R. 960, *dicta* of Lord Denman, C.J. applied.

(4) *Dubber v. Trollope* (1764), Amb. 453; 27 E.R. 300.

(5) *Edwards v. Allen* (1675), Cas. *temp.* Finch 214; 23 E.R. 118.

(6) *Richards v. Bergavenny* (1694), 2 Vern. 324; 23 E.R. 810.

(7) *Shelley's case* (1581), 1 And. 69; 123 E.R. 358.

(8) *Silcocks v. Silcocks*, [1916] 2 Ch. 161; (1916), 114 L.T. 843.

(9) *Wrightson v. Macaulay* (1845), 14 M. & W. 214; 153 E.R. 453.

Beoku-Betts for the plaintiff;
C.E. Wright for the defendant.

TEW, C.J.:

William Henry Pratt, Senior (hereinafter called "the testator") by his late will dated July 18th, 1864 devised certain land at Freetown in the following terms:

> "I devise and bequeath to the said Jonathan Richard Pratt my freehold half lot situate in Pademba Road Freetown and numbered nine hundred and forty eight (948) also my freehold lot and premises numbered respectively one hundred and seventy nine (179) and one hundred and eighty (180) situate in Oxford and Charlotte Streets, Freetown and also one-third part share in nine acres and eleven perches of my freehold land situate in the Race Course Fourah Bay to hold the same three freehold lots and premises and the said one-third part share in the said nine acres and eleven perches unto

and to the use of the said Jonathan Richard Pratt during his natural life and after his death I 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."

The testator died in 1865 leaving six children, who all died intestate before the year 1887. Four of them left no issue: but J.R. Pratt left a son, W.H. Pratt Junior, and his sister Fanny Horton (*née* Pratt) left a daughter, May Turpin, who is the plaintiff in these proceedings. W.H. Pratt, Junior died in 1929, intestate and without issue, and the defendant is his mother and the administratrix of his estate. The questions which this court is asked to decide are as follows:

(a) What is the nature of the estate which was transmitted to William Henry Pratt the heir male of Jonathan Richard Pratt aforesaid on the death of the said Jonathan Richard Pratt?

(b) Who is the person entitled to the properties aforesaid on the death of the said William Henry Pratt, deceased?

The whole difficulty here arises from the use of the words "and in default of such heir male to my own right heir general for ever." If these words had been omitted there could have been no doubt that, under the rule in *Shelley's case* (7) J.R. Pratt would have taken an estate in tail male, and that on his death without issue the land would have gone to the person then answering the description of the heir of the testator, who in this case would be the plaintiff. The use of the expression "heir male" in the singular would not have affected the rule, according to the doctrine laid down in *Richards v. Bergavenny* (6), *Dubber v. Trollope* (4) and *Silcocks v. Silcocks* (8).

Mr. Beoku-Betts argued that here J.R. Pratt took an estate tail with an executory devise to the person who on the failure of issue of J.R. Pratt, should be the heir of the testator. This argument is supported by the case of *Edwards v. Allen* (5) (Cas. *temp.* Finch at 214: 23 E.R. at 118) where a testator had devised certain land to his nephew, "*Tho. Farmer and his Heirs, and for Default thereof, to his own right Heirs for ever.*" Here it was held that Thomas Farmer took an estate tail and that, on his death without issue, the inheritance reverted to the persons who were the heirs of the testator at the time of the nephew's death.

Mr. Wright for the defendant maintained that the devise over to the heirs of the testator must take effect at the earliest possible date, and that the time at which to look for those heirs was the

date of the death of the testator. He referred to several cases including *Wrightson v. Macaulay* (9), *Boydell v. Golightly* (1), and *Doe d. Pilkington v. Spratt* (3). In the first of these cases there was a devise for life to the son and heir-at-law of the testator, then subsequent other devises of the particular estate with remainder to the testator's "own right heirs" and it was held that the estate vested in the son at the time of the death of the testator. In the second case there were somewhat similar dispositions with an ultimate devise to the testator's "own right heirs" and the court ruled that these words referred to the person who answers the description of the testator's heir-at-law at his death. In the last case (5 B. & Ad. at 731; 110 E.R. at 960) the testator devised land to — " 'my son Daniel Spratt and Sarah his wife, and James Hankin and Elizabeth his wife, or the survivor of them, during their natural lives and no longer; and after the decease of all of them to the male heir at law of me the said William Spratt, his heirs and assigns for ever.' " The heir-at-law of the testator at the time of his death was William Spratt Junior, and it was held that he must be taken to be the person designated by the testator as " 'the male heir at law of me the said William Spratt.' "

Mr. Beoku-Betts relied on the case of *Doe v. Frost* (2) (3 B. & Ald. at 546: 106 E.R. at 761) where the testator devised land — " 'to my son, William Frost . . . and if the said W. Frost should have no children, child, or issue, the said estate is, on the decease of the said W. Frost to become the property of the heir-at-law, subject to such legacies as he the said W. Frost may leave by will to any of the younger branches of the family.' "

There it was held that William Frost took an estate in fee with an executory devise over to such person as should at his death be the heir-at-law of the testator. The whole trend of the arguments shows that the position would have been different if William Frost had taken an estate tail and there had been an indefinite failure of issue, instead of failure of issue at the time of William Frost's death. In the case of *Doe d. Pilkington v. Spratt* (3) Lord Denman, C.J. said (5 B. & Ad. at 739; 110 E.R. at 963):

> "The law favours the vesting of estates, and it is an established rule of construction, not to read a limitation in a will as being a contingent remainder, unless such clearly appears to have been the testator's intention — if it admits of being considered as a vested remainder, it will always be read as such. Consequently, where land is given to one for life, or

> any other estate upon which a remainder may be limited, and after the determination of that estate, to a person sustaining a given character as heir at law, heir male, or next of kin of the testator, or of another, the remainder will vest in the person or persons who fill that character at the death of the testator, unless it can be plainly and distinctly made out from the will that the testator intended otherwise."

The learned Chief Justice proceeded to consider the case of *Doe v. Frost* and pointed out that there was an intention shown which prevailed against the general rule to which he had alluded, for, if William Frost himself had been meant as the heir at law, the devise over would be nugatory, and the power of leaving legacies unnecessary.

In the present case there is nothing to exclude the operation of the general rule. J.R. Pratt was the heir-at-law of the testator. Under his father's will, by virtue of that rule, instead of an estate tail only, he took the fee simple as being the person who at the time of the testator's death fulfilled the description of the testator's heir general. On the death of W.H. Pratt, Junior, intestate, the land so acquired vested in the Curator of Intestate Estates by virtue of s. 11 of the Intestate Estates Ordinance (*cap.* 104) and thereafter in the defendant as administratrix under the provisions of s. 12 of the same Ordinance. The defendant as the next of kin of the said W.H. Pratt becomes entitled to the property in question. I do not agree with the argument that the plaintiff should pay the costs of this application, as I consider that she was quite justified in seeking a decision from the court. The costs of both parties will be taxed and paid out of the estate.

Order accordingly.