MAY *v.* WILLIAMS

SUPREME COURT (Kingsley, Ag.C.J.): August 8th, 1950
(Civil Case No. 110/50)

[1] **Land Law—estate tail—words of limitation—devise to persons and their legitimate children after them for ever—"for ever" limits devise to surviving legitimate children at death of last named person:** Where a testator devises property to his widow and named children "and their legitimate children after them for ever," the words "for ever" are words of limitation which limit the devise to those legitimate children of the persons named surviving at the death of the last of such persons named; and therefore the property will not devolve to grandchildren of the testator whose entitled parents did not so survive (page 57, line 28—page 58, line 16).

[2] **Land Law—joint tenancy—words of severance—co-ownership prima facie construed as joint tenancy—words indicating intention to divide property negative joint tenancy—court favours construction creating tenancy in common if ambiguity:** Where property is devised to several persons concurrently, the question whether such persons take as joint tenants or tenants in common depends on the context of the whole will; and although *prima facie* they take as joint tenants, anything which in the slightest degree indicates an intention to divide the property negatives the idea of a joint tenancy, and in the case of ambiguity the court leans to the construction which creates a tenancy in common in preference to that which creates a joint tenancy (page 57, lines 8–21).

[3] **Land Law—joint tenancy—words of severance—devise to persons and their legitimate children after them for ever creates joint tenancy:** A devise of property to named persons "and their legitimate children after them for ever," shows a clear intention that the property should devolve upon the named persons as joint tenants and, after the death of the last survivor of them, to any of their surviving legitimate children (page 57, line 34—page 58, line 13).

[4] **Land Law—tenancy in common—words of severance—co-ownership prima facie construed as joint tenancy—words indicating intention to divide property negative joint tenancy—court favours construction creating tenancy in common:** See [2] above.

[5] **Succession—wills—construction—joint tenancy and tenancy in common—co-ownership prima facie construed as joint tenancy—words indicating intention to divide property negative joint tenancy—court favours construction creating tenancy in common if ambiguity:** See [2] above.

[6] **Succession—wills—construction—joint tenancy and tenancy in common—devise to persons and their legitimate children after them for ever creates joint tenancy:** See [3] above.

[7] **Succession—wills—construction—words of limitation—devise to persons and their legitimate children after them for ever—"for ever" limits devise to surviving legitimate children at death of last named person:** See [1] above.

In an action between the plaintiff and the defendant, the Supreme Court was asked to construe a clause in a will by which the testator devised certain property to his widow and three named children and then to "their legitimate children after them for ever." At the time the last of the named children died, only the plaintiff and one other grandchild of the testator were surviving. The defendant, who had been married to a grandchild who had not survived, claimed a share in the property and the plaintiff instituted the present proceedings.

Case referred to:

(1) *Public Trustee* v. *Clarkson,* [1915] 2 Ch. 216; (1915), 113 L.T. 917, *dictum* of Eve, J. considered.

O.I.E. During for the plaintiff;
Cole for the defendant.

KINGSLEY, Ag.C.J.

In the will of the late Joseph May, dated August 15th, 1888, a clause which I am asked to interpret reads as follows:

> "I give and bequeath my dwelling-house and premises at Liverpool Street, Freetown, to my dear wife Juliana Alexandrina May, to my sons Joseph Claudius May and Theobold Cornelius May, and to my daughter Sarah Augusta Florence May, to them and their legitimate children after them for ever."

The testator died on March 8th, 1891, probate being granted on August 17th of that year. The widow and three children are all dead. One son, the aforementioned Joseph Claudius May, was survived by two children, Clarisa May and the plaintiff in this action. The other son, the aforementioned Theobold Cornelius May, was survived by a daughter Isa May and also had a son Osoba May. The former, herself now deceased, was married to the defendant in this action, a Dr. P.J. Williams, while the latter predeceased his father and was survived by a daughter Tungi May. The court is now asked to say whether the defendant, the said P.J. Williams, and the said Tungi May are entitled to share in the above-mentioned devise. It is not in dispute that the testator's

grandchildren mentioned above and the girl Tungi May are the legitimate children of their respective parents.

It is obvious I think that the answer to the question must, primarily at any rate, depend on whether the widow and children mentioned in the disputed clause took the property as joint tenants or as tenants in common. In 34 *Halsbury's Laws of England*, 2nd ed. at 354, it is there stated:

> "Where property is given to several persons concurrently, the [question] whether these persons take as joint tenants or tenants in common . . . depend[s] on the context of the whole will. *Prima facie* they take as joint tenants; but it has been said that, in considering the context, anything which in the slightest degree indicates an intention to divide the property negatives the idea of a joint tenancy, and that in a case of ambiguity the Court leans to the construction which creates a tenancy in common in preference to that which creates a joint tenancy."

In *Public Trustee* v. *Clarkson* (1), Eve, J., referring to this point, said ([1915] 2 Ch. at 219; 113 L.T. at 919): "[T]he Court will be astute to discover any indication of an intention on the part of the testator to create a tenancy in common." Doubtless with an eye on the list given in *Jarman on Wills*, both 6th and 7th editions, of words which will create a tenancy in common, a list which Eve, J. in the above-mentioned case described (*ibid.*) as "more or less exhaustive," Mr. Cole asked me in construing the said clause to insert the words "each of" before the word "them" which appears in the fifth and sixth lines of it.

I can see no reason why I should. The whole will as I read it points I think just precisely the opposite way. The testator apparently had other children besides those named in the disputed clause; anywhere any property was to be, or could be, sold, and the proceeds distributed in shares, he has clearly said so, as in the case for example of his property at Charles Street, or in the case of his household furniture and other miscellaneous articles. Furthermore the words "to them" following on the absence of any mention of any precise shares are either superfluous, or mean just precisely what I think is clear from the context of the will was the testator's intention, namely, that the widow and the three children named should hold the property as joint tenants.

I am fortified in this view by the implication of the words "after them" which also appear in the disputed clause. Unless there

is some reason why I should interpose the words "each of"—no proper reason has been adduced for my doing so and I can see none myself—these words can in my view in their particular context mean only one thing and that is "after they have all died." In other clauses the testator has been careful enough to mention some of his grandchildren by their respective names, and I hold that the implication of the words "after them," taken in conjunction with the words "to them" to which I have already referred, is that the testator intended that the premises at Liverpool Street should go to the widow and the three children named as their joint property, holding as joint tenants, and after them, or in other words after the death of the last survivor amongst them, to any then surviving legitimate children borne of the three children named.

As I look at the will as a whole, I think it is clear that the words "for ever" are and were intended to be purely words of limitation, and I so hold.

The last of the testator's children to die was Sarah Augusta Florence May who died in 1949, and as at her death the only surviving legitimate grandchildren concerned were Clarisa and Claude Joseph May it follows that the answer as to whether the defendant or the girl Tungi May are entitled to share in the premises mentioned in the disputed clause must be in the negative.

Order accordingly.

IN RE O'REILLY (DECEASED), WILLIAMS *v.* McCORMACK

SUPREME COURT (Kingsley, J.): September 8th, 1950
(Civil Case No. 260/50)

[1] **Succession—executors and administrators—number of executors—grant of probate limited to four executors in respect of same property—any other executors can take up powers only when vacancies occur:** Since O.LII, r.3 of the Supreme Court Rules, 1947 provides that where the Rules are silent on a particular matter, English procedure, practice and forms in force on January 1st, 1946 shall apply in Sierra Leone, the absence of a provision in the Rules with regard to the number of executors to whom probate can be granted means that the number prescribed in s.160 of the Supreme Court of Judicature (Consolidation) Act, 1925 is applicable; and therefore the number of executors to whom probate can be granted is limited to four persons in respect of the same property, any remaining executors that have been appointed being able to take up their powers only as vacancies occur among those acting under the grant (page 61, lines 4–16).