HARDING *v.* HARRIS and OTHERS

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Smith, C.J. (Sierra Leone) and Coussey, J.A.): December 11th, 1952
(W.A.C.A. Civil App. No. 8/52)

[1] **Land Law—estate tail—creation—devise to daughter and her "issues" creates joint tenancy between daughter and her children not estate tail:** While the word "issue" is a collective noun describing a group, the word "issues" has the same meaning as children; and therefore a devise of property to the testator's daughter and her "issues" means that the daughter and her children take *per capita* as joint tenants and not by descent (page 270, lines 22–32).

[2] **Land Law—joint tenancy—creation—devise to daughter and her "issues" creates joint tenancy between daughter and her children:** See [1] above.

[3] **Succession—wills—construction—"issue" collective noun but "issues" means children only—devise to daughter and her "issues" creates joint tenancy between daughter and her children not estate tail:** See [1] above.

The appellant applied to the Supreme Court for a declaration that he was solely entitled to property devised by a will.

The appellant's grandfather devised certain property to his "daughter . . . and her lawful issues," and the appellant claimed that as the eldest son of the testator's daughter he was solely entitled to the property as against the other children under the rule of primogeniture. The Supreme Court (Beoku-Betts, J.) held that the devise was intended to benefit all the children of the testator's daughter alive at the distribution. On appeal, the West African Court of Appeal considered the meaning to be placed on the word "issues" in a will.

Zizer for the appellant;
Jobbs for the respondent.

COUSSEY, J.A.:

In this matter, in which the appellant sought a declaration that by the terms of the will of Moses Walter Nicol, deceased, he became solely entitled to certain devised properties as the eldest son of Virtue Jane Harding, Beoku-Betts, J. held that upon a true construction of the will the devise extended to, and was intended by the testator to benefit, all the five children of Virtue Jane Harding alive at the date of distribution.

The relevant words are as follows:

"I give and bequeath to my daughter Virtue Jane Harding and her lawful issues, firstly, all that my lot of land with the buildings thereon situate in Sanders Street, Freetown . . . ; secondly, all that my lot of land situate at Little East Street . . . ."

In rejecting the contention of the appellant that the rule of primogeniture applied to the gift and that, as the eldest male, he was entitled to take the properties in priority to the other children of Virtue Jane Harding, the learned judge postulated in a passage of his judgment that Virtue Jane Harding was not a purchaser at law and that primogeniture could not therefore apply as regards the rights of her children. This observation was not, in my opinion, strictly necessary for a decision, but it has afforded the appellant the only ground upon which he has been able to found an argument to this court.

With respect to the learned judge, this is an error, and it was readily conceded by counsel for the respondents to be a mistake, for clearly Virtue Jane Harding and her issue take by direct gift as purchasers. Having made this concession to the appellant, it is impossible to hold that the conclusion of the learned judge was affected by this slip.

There are no words to indicate an intention by the testator to create a devise limited in tail male to the appellant as he suggests. The language to be construed is perfectly clear and I am satisfied to adopt the reasoning of the learned trial judge and to hold, as he did, that by the use of the word "issues" the testator intended all the five children of Virtue Jane Harding to take under the gift. "Issue" is a collective noun but the word "issues," while in my opinion describing a group, yet preserves the individuality of the members of the group, and for the purpose of construing the will before the court has the same meaning as "children." In the result the children take *per capita* as joint tenants and not by descent.

In both the ultimate paragraph of the judgment and in the formal order of the same date, the word "issue" appears instead of "issues." This is clearly a typographical error, and if it extends to the original copied judgment and order it should be amended to conform with the word used in the will. I would dismiss this appeal.

SMITH, C.J. (Sierra Leone) and FOSTER-SUTTON, P. concurred.

Appeal dismissed.