

## BAILEY v. CLINE-COLE and OTHERS

SUPREME COURT (Massally, J.): March 18th, 1968  
(Civil Case No. 229/67)

- [1] Land Law—joint tenancy—words of severance—devise to two persons “in equal enjoyment during their lives” with gift over “after their death” creates joint tenancy: In a gift to two persons “in equal enjoyment during the term of their natural lives” followed by a gift over “after their death,” the words “equal enjoyment” are not words of severance and the two take as joint tenants, not as tenants in common (page 380, line 35—page 381, line 7). 5
- [2] Succession—wills—construction—joint tenancy and tenancy in common—gift to two persons “in equal enjoyment during their lives” with gift over “after their death” makes them joint tenants: See [1] above. 10
- [3] Succession—wills—construction—ordinary dictionary meaning to be given to words of will: In construing a will, the court is not entitled to speculate on what the testator might have intended, but must ascertain the intention from the language used, taking the words in their ordinary dictionary meaning (page 381, lines 3-6). 15
- [4] Succession—wills—construction—testator’s intention ascertained from words of will—court not to speculate as to intention: See [3] above. 20
- [5] Succession—wills—construction—words of severance—“equal enjoyment” not words of severance in gift to two persons “in equal enjoyment during their lives” with gift over “after their death”: See [1] above. 25

The applicant applied by originating summons for the construction of a will.

The testatrix by her will gave a house to the applicant and the applicant’s brother “in equal enjoyment during the term of their natural lives” and went on to direct that the house should not be sold “after their death” but should be given to their children. After her brother’s death, the applicant commenced the present proceedings to determine the interests taken by herself, her brother and the children. 30

The applicant contended that the will created a joint tenancy in herself and her brother followed, after the death of the survivor of them, by a tenancy in common among the children. The respondents contended that the applicant and her brother took a tenancy in common. 35

*McCormack* for the applicant;  
*Gelaga-King* for the respondents.

MASSALLY, J.:

This is an application by originating summons asking for the construction of the will of Leah Lucretia Cline-Cole made on June 13th, 1935. The will was duly proved on August 28th, 1939.

The portion to be construed is in the first clause of the will, which reads:

"First I give, devise and bequeath my dwelling house situated at 60 Westmoreland Street, Freetown, wherein I reside unto and to the use of my two children Annie Louisa Bailey and Akie Prince Cline-Cole in equal enjoyment during the term of their natural lives. The said premises should not be sold after their death. The said dwelling house should be given to any child or children, born by the said Annie Louisa Bailey and the said Akie Prince Cline-Cole, whether legitimate or illegitimate. The said dwelling house should be separate and independent from the debts control of the husband of the said Annie Louisa Bailey."

It is evident from this clause that Leah Lucretia Cline-Cole gave a life interest to her two children Annie Louisa Bailey and Akie Prince Cline-Cole. The two statements to be construed are: (a) "In equal enjoyment during the term of their natural lives," and (b) "after their death."

Mr. McCormack for the applicant asks the court to say that the two clauses referred to above gave a joint tenancy to Annie Louisa Bailey the applicant and Akie Prince Cline-Cole. Mr. Gelega-King for the respondent states that "equal enjoyment" should be construed as words of severance, and that on the true construction of the will the testatrix gave Annie Louisa Bailey and Akie Prince Cline-Cole 60, Westmoreland Street as tenants in common and not as joint tenants. He stressed that the connotation of "equal enjoyment" is equivalent to words of severance.

"Equal" is given in *Funk & Wagnalls Standard Dictionary of the English Language*, Internat. ed. as "1. Of the same degree with one another or with each other; neither greater nor less. . . . 5. Having the same rank, right or importance." "Enjoyment" is given by the same dictionary as "1. The act or state of enjoying. 2. Something that gives joy or satisfaction." So that from the dictionary meaning of these two words neither of them relates to

words of severance. "After their death" can only be interpreted to mean after the death of both of them.

I am not entitled to speculate on what the testatrix might have intended. I have to construe on the language used, to ascertain the intention from the language or from the ordinary dictionary meaning of the words "equal enjoyment." I am to hold that the testatrix gave Annie Louisa Bailey and Akie Prince Cline-Cole a joint tenancy of 60, Westmoreland Street, and all the children of both of them a tenancy in common after the death of Annie Louisa Bailey, the survivor.

There will be therefore a declaration as prayed. Each party pays his own costs.

*Order accordingly.*

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ATTORNEY-GENERAL v. AKAR

COURT OF APPEAL (Sir Samuel Bankole Jones, P., Dove-Edwin and Marcus-Jones, JJ. A.): April 5th, 1968  
(Civil App. No. 1/68)

- [1] Aliens and Nationality—citizenship—citizens of Sierra Leone by birth—persons not of negro African descent excluded by Constitution (Amendment) (No. 2) Act, 1962: The Constitution (Amendment) (No. 2) Act, s.2, which amends the Constitution, both directly and by implication, so as to take away citizenship by birth acquired under the Constitution from persons not of negro African descent, is not discriminatory, being based solely upon considerations of second-generation descent, not race, or, if discriminatory, is reasonably justifiable in a democratic society, and it and the Constitution (Amendment) (No. 3) Act, 1962 are not *ultra vires* (page 396, lines 4-5, 27-29; page 397, lines 28-30).
- [2] Constitutional Law—amendment of constitution—enactment—procedure referred to in Sierra Leone Independence Act, 1961, Second Schedule, s.6, found in Constitution, s.43: An amendment to the Constitution is made in the manner prescribed by the Sierra Leone Independence Act, 1961, Second Schedule, s.6, that is, in such manner as is provided for in the Constitution, if it is enacted in accordance with the relevant provisions of s.43 of the Constitution (page 392, lines 39-41).
- [3] Constitutional Law—amendment of constitution—enactment—proof of due enactment—omnia praesumuntur rite esse acta: When it is a question whether a constitutional amendment has been enacted in accordance with the provisions of s.43 of the Constitution, the pre-