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Real Property - Joint Tenancy - Effect of Contract to Convey by Joint Tenants of Entire Interest in Property as a Severance of the Joint Tenancy

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REAL PROPERTY—JOINT TENANCY—EFFECT OF CONTRACT TO CONVEY BY JOINT TENANTS OF ENTIRE INTEREST IN PROPERTY AS A SEVERANCE OF THE JOINT TENANCY—*H* and *W*, as owners of certain real state in joint tenancy with rights of survivorship, contracted to convey this property. Prior to conveyance, and while part of the purchase price still remained to be paid, *H* died. Petitioner, an heir of *H*, brought action in equity for a declaratory judgment to determine the effect of a contract to convey land held in joint tenancy. The lower court held the joint tenancy had been terminated by the contract of sale and the contract to convey was held by *H* and *W* as tenants in common so that on the death of *H* his undivided one-half interest descended to his heirs. On appeal, *held*, affirmed, four judges dissenting.

The contract to convey severed the joint tenancy. Also, *H* and *W* did not show an intent that the contract was to be held in joint tenancy, and therefore it was held in tenancy in common.¹ *In re Baker's Estate*, 247 Iowa 1380, 78 N.W. (2d) 863 (1956).

The holding of the principal case involves two separate issues. (1) Was the joint tenancy of the legal title retained by *H* and *W* severed by the contract to convey? (2) By what form of tenure was the right to receive the proceeds from the contract held? As to the first issue, the court reasoned that since a contract to convey by one joint tenant works a severance,² by analogy a contract by both joint tenants to convey works the same severance. The reason for a severance of the legal interest retained by the seller and his co-tenant, however, in the case of a contract to convey by one joint tenant, is that the unity of interest is thereby destroyed,³ while in the case of a contract to convey by both joint tenants, the unity of interest remains the same.⁴ The court also argued that the equitable doctrine of conversion somehow caused a severance. Equitable conversion, however, only has the effect of giving to a purchaser the right to demand from the vendor the legal title which the vendor retains.⁵ Since legal title remains in the vendors and is still evidenced by the same deed there is no reason why it should be changed.⁶ Further, since it is an equitable principle, conversion should not be used to frustrate the intent of the parties.⁷ In a

¹ Two cases in point were cited by the majority. *In re Estate of Sprague*, 244 Iowa 540, 57 N.W. (2d) 212 (1953), where the parties had stipulated that a contract to convey a joint tenancy had severed the joint tenancy and the contract was held in common so that while the court *obiter* recited a holding to this effect, the decision actually rested on a question of ademption. *Buford v. Dalhke*, 158 Neb. 39, 62 N.W. (2d) 252 (1954), had decided that a contract to convey a joint tenancy operated to sever the joint tenancy but had largely relied on the dictum of *In re Sprague*. The court in the principal case was admittedly influenced by the REPORT OF THE COMMITTEE ON IOWA LAND TITLE EXAMINATION STANDARDS OF THE IOWA STATE BAR ASSOCIATION, 3d ed., §4:11 (1955). See criticism of this section of the report in 2 DRAKE L. REV. 76 at 90 and 91 (1953). *Contra*: *Watson v. Watson*, 5 Ill. (2d) 526, 126 N.E. (2d) 220 (1955); *Simon v. Chartier*, 250 Wis. 642, 27 N.W. (2d) 752 (1947); *In re DeWitt's Will*, 202 Misc. 167, 114 N.Y.S. (2d) 81 (1952).

² *Klouda v. Pechousek*, 414 Ill. 75, 110 N.E. (2d) 258 (1953); *In re Hewett*, [1894] 1 Ch. Div. 362; *Gould v. Kemp*, 2 Myl. and K. 304, 39 Eng. Rep. 959 (1833).

³ In the case of an actual conveyance by one cotenant of a joint tenancy the unity of title is destroyed. 2 BLACKST. COMM. *192. However in the case of a contract to convey by one of the joint tenants it is clear that the joint tenants have the same title while the destruction is caused by the change in the interest of the one contracting to convey.

⁴ 32 IOWA L. REV. 539 (1947). It is submitted that as before stated the reason for severance by a contract of one joint tenant to convey is the destruction of the unity of interest and not the unity of title as stated by this note. It is of interest to note that the majority also found that the necessity for the four unities no longer existed in Iowa. In support of this the majority cited *Conlee v. Conlee*, 222 Iowa 561, 269 N.W. 259 (1937), which dealt with property held by partners, and *Switzer v. Pratt*, 237 Iowa 788, 23 N.W. (2d) 837 (1946). The dissent expressed doubt as to whether these cases held that the four unities were no longer applicable in Iowa.

⁵ 41 CORN. L. Q. 154 (1955).

⁶ *Swenson and Degnan*, "Severance of Joint Tenancies," 38 MINN. L. REV. 466 (1954).

⁷ 41 CORN. L. Q. 154 (1955).

case like the principal case there is no reason to believe that the intent of the parties as to how they held the property in question would be any different from what it was when the title was first obtained. As to the second issue, the court noted that the contract was silent as to how the interest of *H* and *W* was to be held, but that it clearly stated that the interest of the purchasers was to be held in joint tenancy. From this the court inferred an intent on the part of *H* and *W* to hold the right to the proceeds by tenancy in common. A finding of intent in such a situation from an omission in the contract might well be questioned. In any case, the court also rested this much of its decision on the sounder ground of a statutory presumption. Under Iowa statute⁸ it is provided that where a conveyance is made to two persons it is presumed to be held in common unless a contrary intent is expressed, and this argument is rightly entitled to a great deal of weight. In similar cases in tenancy by the entirety,⁹ however, other courts have found an intent that the contract be held by the entirety from the fact that the land sold was so held.¹⁰ Further, as stated by the High Court of Justice in Ireland in *Hayes Estate*,¹¹ it may be found that a mere agreement by joint holders to convert their property from one specie to another does not indicate a change of intent as to how the newly acquired property is to be held.

The holding of the court as to the legal title of the vendors is regrettable, for it will require a deed running from several parties and unnecessarily add to the difficulty of giving title.¹² Also, it is a defect which cannot be corrected by drafting since, as a matter of law by this holding, a mere contract to convey would inevitably work a severance of the legal title no matter how the proceeds of the contract were to be held. Furthermore, it will have the effect of making titles previously given by survivors suspect. The holding of the court as to the proceeds under the contract is better supported by logic and would have a less serious effect on the law as a whole. As a practical matter it would probably not result in many claims by heirs who had not received their share of a contract. As for future

⁸ Iowa Code (1954) §557.15.

⁹ While tenancy by the entirety is very similar to joint tenancy it is not identical, so that care must be used in reasoning from one type of estate to the other. For a citation of analogous cases involving tenancy by the entireties see annotations in, 8 A.L.R. 1017 (1920), 30 A.L.R. 905 (1924), 117 A.L.R. 915 (1938). It would seem that a majority of the jurisdictions which recognize tenancy by the entirety in personal property hold there is no severance in case of a contract to convey and that a mortgage back of the land sold for the purchase price is held by the entireties. *Matter of Maguire*, 251 App. Div. 337, 296 N.Y.S. 528 (1937); *Allen v. Tate*, 58 Miss. 585 (1881); *Detroit and Security Trust Co. v. Kramer*, 247 Mich. 468, 226 N.W. 234 (1929); *Childs v. Childs*, 293 Mass. 67, 199 N.E. 383 (1935).

¹⁰ *Bramberry's Estate*, 156 Pa. 628, 27 A. 405 (1893); 22 L.R.A. 594 (1894). See also 4 THOMPSON, REAL PROPERTY, perm. ed., §1818 (1939).

¹¹ [1920] I.R. 103, 207; *Kingsford v. Ball*, 2 Giff. (App.) i, 66 Eng. Rep. 294 (1852), cited in the *Hayes* case.

¹² *Swenson and Degnan*, "Severance of Joint Tenancies," 38 MINN. L. REV. 466 (1954).

effect, it can be provided for by merely stating in the contract itself that the proceeds are to run to the vendors as joint tenants.

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