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# JOINT TENANCY - RIGHT TO TRANSFER BY ONE PARTY - RIGHT OF SURVIVORSHIP

John H. Pickering
*University of Michigan Law School*

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JOINT TENANCY — RIGHT TO TRANSFER BY ONE PARTY — RIGHT OF SURVIVORSHIP — In two recent cases the Supreme Court of Michigan has had occasion to pass upon the doctrine of survivorship in joint tenancies. In one case the deed ran to father and son as joint tenants and contained a covenant that neither would sell without the written consent of the other. The father conveyed his interest without the son's consent and died. The court held that the deed created a joint tenancy, that since the restrictive covenant was void as a restraint on alienation and repugnant to the grant, the joint tenancy was severed by the father's conveyance, and therefore the right of survivorship was gone and the son and the grantee of the father held as tenants in common.[1] Another decision[2] handed down the same day construed a deed reading to *A* and *B* "as joint tenants and not tenants in common, and to the survivor thereof, parties of the second part" to create an indestructible right of survivorship. The court refused to partition the land, saying,

> "Where property stands in the name of joint tenants with right of survivorship, neither party may transfer the title to the premises and deprive the other of such right of survivorship."[3]

Since many deeds, thought to create a joint tenancy, contain various phrases providing for survivorship, an acute question is raised as to

[1] Smith v. Smith, 290 Mich. 143, 287 N. W. 411 (1939).

[2] Ames v. Cheyne, 290 Mich. 215, 287 N. W. 439 (1939). For a discussion of this case, see 3 UNIV. DETROIT L. J. 20 (1939).

[3] Ames v. Cheyne, 290 Mich. 215 at 218, 287 N. W. 439 (1939).

whether the addition of such words necessarily creates an indestructible right of survivorship.

I.

Blackstone defines a joint tenancy as the estate created by a conveyance to two or more persons to hold in fee simple, fee tail, for life, for years, or at will.[4] Necessary to the estate are the four unities of time, title, interest and possession.[5] This concept of the unity of the estate of joint tenancy leads to the doctrine of survivorship, characterized as the "grand incident of joint estates."[6] Upon the death of one joint tenant his interest does not pass by descent or devise; his surviving joint tenants take by force of the deed creating the estate.[7] A joint tenancy is severed by the destruction of any of the four unities; the severance of the estate destroys the incidents thereof, including the right of survivorship.[8]

The common law favored the creation of joint tenancies since such an estate avoided multiplying the feudal duties resting on the land.[9] Tenancy in common had to be expressly provided for, and courts seized upon the use of the word "survivor" as creating a joint tenancy even when other language in the grant indicated an intent to have the property divided.[10] However, it is said that equity abhorred joint tenancy and its doctrine of survivorship. Consequently courts of equity construed language providing for division as creating tenancies in common despite words of survivorship.[11] The wisdom of equity's

[4] 2 BLACKSTONE, COMMENTARIES 179 (first published in 1756).

[5] 2 ibid., 180.

[6] 2 ibid., 183; 2 TIFFANY, REAL PROPERTY, 3d ed., § 419 (1939).

[7] Authorities cited, note 6.

[8] 2 BLACKSTONE, COMMENTARIES 185; 2 TIFFANY, REAL PROPERTY, 3d ed., § 425 (1939).

[9] "Lastly he [Chief Justice Holt] said, joint-tenancies were favored, for the law loves not fractions of estates, nor to divide and multiply tenures." Fisher v. Wigg, 1 Salk. 391, 91 Eng. Rep. 339 at 340 (1700). "But the law is apt, in its constructions, to favor joint-tenancy rather than tenancy in common; because the divisible services issuing from land (as rent, etc.) are not divided, nor the entire services (as fealty) multiplied, by joint-tenancy, as they must necessarily be upon a tenancy in common." 2 BLACKSTONE, COMMENTARIES 193; 2 TIFFANY, REAL PROPERTY, 3d ed., § 421 (1939).

[10] Ward v. Everet, 1 Ld. Raym. 422, 91 Eng. Rep. 1180 (1698); Hurd v. Lenthall, Style 211, 82 Eng. Rep. 653 (1649).

[11] "But Cowper, Lord Chancellor, held, that a joint-tenancy is an odious thing in equity . . . that it is to the disadvantage of the mortgagor that the joint-tenancy should continue; because if he happen to die first, all his estate and interest goes from his representatives to the survivor, unless it be construed a severance." York v. Stone, 1 Salk. 158, 91 Eng. Rep. 146 (1710); Stones v. Heurtly, 1 Ves. Sen. 165, 27 Eng. Rep. 959 (1748); Blaine v. Dow, 111 Me. 480, 89 A. 1126 (1914); FREEMAN, COTENANCY AND PARTITION, 2d ed., § 13 (1886).

hatred of the doctrine of survivorship is shadowed in Blackstone's admission that it is advantageous to dissolve the tenancy, as thereby the right of survivorship is destroyed.[12] But survivorship, while being the "grand incident of joint tenancy," can also be attached to a tenancy in common by express language.[13]

2.

Since the doctrine of survivorship is implicit in a joint tenancy, Coke was moved to write,

> "And so it is if lands be letten to two for terme of their lives, *et eorum alterius diutius viventi*, and one of them granteth his part to a stranger, whereby the joynture is severed, and dyeth, here shall be no survivour but the lessor shall enter into the moity, and the survivour shall have no advantage of these words, *et eorum alterius diutius viventi*, for two causes. First, for that the joynture is severed. Secondly, for that those words are no more than the Common Law would have implyed without them."[14]

However, Butler emphasizes the fact that Coke was speaking only of a joint tenancy for life and himself sets forth the proposition that the granting of an estate to *A* and *B*, and the survivor of them and the heirs of the survivor, creates a joint estate for the life of the shortest liver with a contingent remainder in fee to the survivor.[15] This view is understandable, due to the common-law rule that words of inheritance were necessary to create a fee. In the example given, the fee is created only in the survivor as the limitation is to his heirs alone. Enunciation of this principle occurred where a devise was to *A*, *B*, and *C* as trustees and "to the survivor or survivors of them, and the heirs, executors, and administrators of such survivor." *A*, *B*, and

[12] "In general, it is advantageous for the joint-tenants to dissolve the jointure; since thereby the right of survivorship is taken away, and each may transmit his own part to his own heirs." 2 BLACKSTONE, COMMENTARIES 187.

[13] Doe v. Abey, 1 M. & S. 428, 105 Eng. Rep. 160 (1813).

[14] COKE ON LITTLETON, § 301 (first published in 1628).

[15] "Here Lord Coke speaks only of a jointenancy for life; in which case, the words *and the survivor of them* are merely words of surplusage; as, without them, the lands, upon the death of one jointenant, go to the survivor. But, in the creation of a joint tenancy in fee, particular care must be taken not to insert these words. For the grant of an estate *to two and the survivor of them, and the heirs of the survivor*, does not make jointenants in fee; but gives them an estate of freehold, during their joint lives, with a contingent remainder in fee to the survivor." 2 COKE ON LITTLETON, 19th ed., § 301, note by Butler (1832). See also 2 TIFFANY, REAL PROPERTY, 3d ed., § 421 (1939); FREEMAN, COTENANCY AND PARTITION, 2d ed., § 12 (1886); 1 WASHBURN, REAL PROPERTY, 4th ed., 648 (1876).

*C* wished to convey the property, and the court compelled the infant heir of the testator to join in the conveyance on the theory that the fee was in him during the joint life estate of *A*, *B*, and *C*.[16]

A similar case arose involving lands devised to *A* and *B* "and the survivor of them, and the heirs of such survivor in trust to sell." Again this was construed as creating a joint estate for life with a contingent remainder in fee to the survivor. The trustees were allowed to convey by levying a fine which would estop the survivor from claiming the fee when the remainder vested in him.[17] Fearne questions the decision on the ground that the fee might be construed as passing in joint tenancy, despite the absence of words of inheritance, in accordance with the doctrine that an indefinite devise passes the fee since the trustees were to deal with the whole fee, there being a provision for sale.[18] In line with Fearne's contention are two cases. One involved a devise to three persons, to have and to hold to them *as joint tenants* and the survivors and survivor of them and the heirs and assigns of such survivor. The court of King's Bench held that the expressed intention that the parties should take jointly overruled the limitation of the fee to the survivor alone; consequently a joint estate in fee was created.[19] A similar result was reached where the devise was to *A* and *B jointly*, and the survivor of them, their heirs and executors forever.[20]

From the foregoing it appears that the English courts make a distinction between a grant to *A* and *B* and to the survivor, his heirs and assigns, and a grant to *A* and *B in joint tenancy*, and to the survivor, his heirs and assigns. In the latter example the intention to create a joint tenancy overrides the limitation of the fee to the survivor alone. But this distinction was not followed in a case arising under the Wills Act[21] which provided that a devise without words of limitation would be sufficient to pass the fee unless a contrary intention appeared in the will. Testator devised his estate to seven named persons "as joint tenants, and not as tenants in common, and to the survivor or longest liver

[16] In the Matter of Harrison, 3 Anst. 836, 145 Eng. Rep. 1055 (1796).

[17] Vick v. Edwards, 3 P. Wms. 372, 24 Eng. Rep. 1107 (1735).

[18] "But the operation of such a devise, in giving the trustees only an estate for life, with a contingent fee to the survivor; and the necessity for a fine from them, seems at least problematical; considering the strong ground afforded by the nature of the trust, for construing the fee to pass to the trustees absolutely, even without any words of limitation; according to the general doctrine of the fee's passing by an indefinite devise; where the extent and execution of the trust reaches the whole fee; as that for a sale and disposition of the lands clearly does." 1 FEARNE, CONTINGENT REMAINDERS, 10th ed., 357 (1844).

[19] Goodtitle v. Layman, King's Bench Trinity Term, 12 Geo. III, discussed in 1 FEARNE, CONTINGENT REMAINDERS, 10th ed., 358 (1844).

[20] Doe d. Young v. Sotheron, 2 B. & Ad. 628, 109 Eng. Rep. 1276 (1831).

[21] 7 Will. 4 & 1 Vict., c. 26 (1837).

of them, his heirs, or assigns for ever." The claim that this created a joint tenancy in fee was rejected and the language was held to express an intention sufficient to overcome the presumption (as provided by the Wills Act) that a fee simple was devised. A joint life estate with contingent remainder to the survivors was created.[22]

The net result of the English cases would seem to be that a limitation of the fee to *A* and *B* and to the survivor, his heirs and assigns, creates a joint life estate with contingent remainder in fee, while possibly the addition of words that the estate is to be held *in joint tenancy* removes the effect of such limitation and creates a joint tenancy in fee.

3.

Joint tenancy has not been favored in the United States. The basis for the common-law preference, avoidance of multiplying feudal duties, does not exist here.[23] The estate has been abolished by statute or judicial decision in some states; in others it has been modified in certain respects, principally by elimination of the right of survivorship.[24] In the light of this prejudice against survivorship, it is surprising that many American cases have followed the lead of Butler[25] and have held that a grant to *A* and *B* and to the survivor, his heirs and assigns, creates a joint estate for life with contingent remainder. By such a holding a binding right of survivorship is created which cannot be destroyed by severance of the joint life estate. Three distinct theories seem to be followed in arriving at this result: (1) in the absence of words of inheritance a life estate only is created in *A* and *B*; (2) since survivorship is implicit in a joint tenancy, the grantor or devisor by addition of words of survivorship must mean to create something other than a mere joint tenancy; (3) in jurisdictions where either joint tenancies or the right of survivorship as an incident thereto are abolished, this construction is adopted in order to carry out the intent of the conveyor.

Under the first theory a deed to *A* and *B* and to the survivor of them, his heirs and assigns, was held to convey a life estate and contingent remainder on the ground that although there was no express limitation to *A* and *B* for life, the explicit limitation of the fee to the survivor alone necessarily implied it.[26] A similar result was reached in two cases considering the same devise which was to *A*, *B*, and *C* "and to the survivor of them, and to the heirs and assigns of such

[22] Quarm v. Quarm, [1892] 1 Q. B. 184.

[23] 2 TIFFANY, REAL PROPERTY, 3d ed., § 421 (1939). See note 9, supra.

[24] 2 TIFFANY, REAL PROPERTY, 3d ed., § 419 (1939); FREEMAN, COTENANCY AND PARTITION, 2d ed., §§ 37, 38 (1886).

[25] Note by Butler, 2 COKE ON LITTLETON, 19th ed., § 301 (1832). See note 15, supra.

[26] Ewing's Heirs v. Savary, 3 Bibb. (Ky.) 235 (1813).

survivor."[27] These cases would not seem applicable to conveyances or devises made under modern statutes which provide for the passing of a fee despite the absence of words of inheritance.

Proceeding on the second theory, which is based on the presumed intent of the grantor to create something more than a mere joint tenancy, are several cases, including the Michigan cases cited in the decision in *Ames v. Cheyne*.[28] A deed describing "*A* and *B* and the survivor of them" as parties of the second part and granting the premises to the "parties of the second part, and their heirs and assigns" was held to show the intent of the grantor to convey a moiety to each for life with remainder to the survivor in fee, and neither *A* nor *B* was capable of defeating the remainder by conveyance of his interest since only his life estate passed thereby.[29] A similar result was reached where the deed ran to *A* and *B* "and to the survivor of them and to their heirs and assigns."[30] The same construction has been placed upon a deed to four named persons "as joint tenants, and to their heirs and assigns, and to the survivors or survivor of them, and to the heirs and assigns of the survivors or survivor of them, forever."[31] Likewise a conveyance running to *A* and *B* (upon the eve of their marriage) "as joint tenants, and not as tenants in common, the survivor to take of the second part" was held to create something more than a mere joint tenancy. This something more was declared to be a joint tenancy restricted in the same manner as a tenancy by the entireties; partition was denied since a binding right of survivorship was intended by the parties.[32]

In the opinion of the writer this construction based upon the presumed intent of the grantor is fallacious. In the first place, the deed or will is often prepared by inexperienced persons, possibly the parties themselves, who surely do not visualize the possibilities of a joint life estate and contingent remainders; courts should proceed cautiously in

[27] Hannon v. Christopher, 34 N. J. Eq. 459 (1881); Apgar v. Christophers, (C. C. N. J. 1887) 33 F. 201.

[28] 290 Mich. 215, 287 N. W. 439 (1939).

[29] Schultz v. Brohl, 116 Mich. 603, 74 N. W. 1012 (1898).

[30] Finch v. Haynes, 144 Mich. 352, 107 N. W. 910 (1906).

[31] "The words 'survivor or survivors' attached to the granting clause indicate an intention upon the part of the grantor to create something more than a mere joint tenancy. . . . It is quite evident that those words were used by Mr. Root for some purpose, and we think that purpose must have been to secure the property to the longest liver or to the survivor. Under this view we must construe the deed as creating a joint tenancy for life in the grantees with a contingent remainder in fee simple to the survivor." Jones v. Snyder, 218 Mich. 446 at 449, 188 N. W. 505 (1922). See also Malloy v. Barkley, 219 Ky. 671, 294 S. W. 168 (1927), where a similar construction was placed on a deed to *A* and *B* in fee simple and to the survivor in fee simple, their heirs and assigns.

[32] Messing v. Messing, 64 App. Div. 125, 71 N. Y. S. 717 (1901).

construing express provisions of survivorship to create such an unusual estate in the absence of language expressly demanding such a result. In the second place, most states still allowing joint tenancies provide that a deed to two or more persons will be construed to create a tenancy in common unless it is expressly declared to be a joint tenancy;[33] it is a reasonable supposition that the addition of words of survivorship is merely to further rebut the statutory presumption in favor of a tenancy in common.

Several cases have adopted this idea, that the use of express words of survivorship alone indicates an intent to have a joint tenancy sufficient to rebut the presumption against such estates.[34] These cases have caused adverse comment on the basis that survivorship is merely an incident of joint tenancy and therefore a deed to *A* and *B* and the survivor thereof should not be sufficient to dispel the statutory presumption.[35] This is pertinent criticism in view of the fact that survivorship may be attached to an estate other than a joint tenancy.[36] But it does not imperatively follow that the grantor intended to create a life estate and contingent remainder by the use of a phrase indicating that the survivor is to take.

The theory based upon the grantor's intent becomes more unsound when cases are examined wherein deeds or devises run to *A* and *B as joint tenants* and to the survivor thereof. This is substantially the language used in *Ames v. Cheyne*.[37] In construing such instruments some courts have merely treated the addition of words of survivorship as

[33] The following Michigan statute is typical: "All grants and devises of lands, made to two (2) or more persons, except as provided in the following section, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy." 3 Mich. Comp. Laws (1929), § 12964.

[34] Stimpson v. Batterman, 5 Cush. (59 Mass.) 153 (1849); but cf. Bowditch v. Attorney General, 241 Mass. 168, 134 N. E. 796 (1921), where a devise to *A*, *B*, and *C* and the last survivor was held to create a contingent interest in the last survivor; Dewey v. Brown, 133 Misc. 69, 231 N. Y. S. 165 (1928); Wood v. Logue, 167 Iowa 436, 149 N. W. 613 (1914); Weber v. Nedin, 210 Wis. 39, 242 N. W. 487, 246 N. W. 307, 686 (1932); In re Richardson's Estate, 229 Wis. 426, 282 N. W. 585 (1938). See also 18 MINN. L. REV. 79 (1933); 37 MICH. L. REV 1318 (1939).

[35] "But whether the mere fact that the donor indicates an intention that the survivor or survivors shall take should be given such an effect appears to be open to question. The right of survivorship is merely one incident of a joint tenancy. Another incident of such tenancy is that any one of the tenants can destroy it, with the incidental right of survivorship, by an conveyance to a third person, and when one makes a gift to two or more with the right of survivorship, it appears to be a reasonable conclusion that he has in mind an indestructible right of survivorship." 2 TIFFANY, REAL PROPERTY, 3d ed., § 424, p. 208 (1939).

[36] Doe v. Abey, 1 M. & S. 428, 105 Eng. Rep. 160 (1813).

[37] 290 Mich. 215, 287 N. W. 439 (1939).

further evidence of intention to create a joint tenancy.[38] In the light of the strong presumptions often raised against joint tenancies, this construction would seem to be entirely sound; mention is explicitly made of the "grand incident of joint tenancy," survivorship, to aid in overcoming that presumption.

Cases coming within the third classification appear to be the only ones wherein it is sound to allow the creation of an estate for the joint lives with contingent remainder to the survivor. In a jurisdiction where joint tenancy is abolished by statute the only effect which can be given to the express provision for survivorship is to construe it as creating a contingent remainder; it cannot operate to create a joint estate in fee carrying with it the incident of survivorship.[39] The same reasoning applies where a modified form of joint tenancy exists, shorn of the incident of survivorship. If a grantor expressly provides for such a right, he must mean something other than the restricted joint tenancy allowed in the jurisdiction. Consequently the construction of an estate for the joint lives with contingent remainder in fee is adopted.[40] A covenant to stand seised to uses to *A* and *B* "and to the heirs of each of them forever . . . to have and to hold the same . . . as tenants in common; and upon the death of either one, then to the survivor and his or her heirs forever" was construed to provide for a defeasible fee in the two donees with the survivor taking the whole fee by a shifting use. A tenancy in common was expressly provided for and hence a joint tenancy could not be allowed, even the joint tenancy devoid of the right of survivorship.[41]

Courts have felt no inconsistency between allowing such estates and the declared legislative policy that survivorship as an incident of joint tenancy is abolished, or that the estate itself is outlawed. The explanation generally given is that the prohibitions of the statutes apply only

[38] "The language 'with full and absolute title to his or her, the last survivor of said parties of the second part . . .' is merely descriptive of one of the chief incidents of a joint tenancy, i.e., the right of survivorship. . . . The estate contended for by appellant—a joint life estate with contingent remainder to the survivor, is of such an unusual nature that before a court would be justified in holding such an estate had been created, clear and unambiguous language to that effect would have to be used. Here there is no ambiguity or uncertainty in the words used." Hart v. Kanaye Nagasawa, 218 Cal. 685 at 688, 689, 24 P. (2d) 815 (1933). See also Swan v. Walden, 156 Cal. 195, 103 P. 931 (1909); Fladung v. Rose, 58 Md. 13 (1881); Michael v. Lucas, 152 Md. 512, 137 A. 287 (1927).

[39] Lewis v. Baldwin, 11 Ohio 352 (1842); In re Estate of Hutchison, 120 Ohio St. 542, 166 N. E. 687 (1929).

[40] Arnold v. Jack's Exrs., 24 Pa. St. 57 (1854); Leach's Estate, 282 Pa. St. 545, 128 A. 497 (1925); Mittel v. Karl, 133 Ill. 65, 24 N. E. 553 (1890); McLeroy v. McLeroy, 163 Tenn. 124, 40 S. W. (2d) 1027 (1931); Withers v. Barnes, 95 Kan. 798, 149 P. 691 (1915); Bartholomew v. Muzzy, 61 Conn. 387, 23 A. 604 (1891).

[41] Rowland v. Rowland, 93 N. C. 214 (1885).

to the creation of a right of survivorship as an incident, but not as a principal.[42]

4.

Considering again the case of *Ames v. Cheyne*,[43] is it possible to place the decision upon any of the three theories advanced, that is, necessity for words of inheritance, intent of the grantor to create more than a joint tenancy, or the fact that such a construction is necessary because of the abolition of joint tenancy or the incident of survivorship?

It is no longer necessary to add words of inheritance to convey a fee in Michigan; unless the grantor expresses an intent to convey a lesser estate in the transfer, the fee is conveyed.[44] The proposition should not be advanced that a conveyance "to *A* and *B* and to the survivor and to the heirs and assigns of the survivor" limits the fee to the survivor alone, as the fee could pass to *A* and *B* without words of inheritance. An argument to the effect that the grantor has expressed an intent to convey a lesser estate to *A* and *B* by the express limitation placed upon the survivor would seem too tenuous.

Joint tenancies are recognized in Michigan[45] with the qualification that a conveyance to two or more persons is presumed to be a tenancy in common.[46] They are subject to partition[47] and may be destroyed in that

[42] Speaking of its statute abolishing survivorship, the Supreme Court of Kansas said it "abolished joint tenancies and the doctrine of survivorship *by operation of law*. It would be far-fetched indeed to hold that the grantor of a fee could not *purposely* make a conveyance which would confer common ownership on two grantees or the entire fee on one of them upon the death of the other." Withers v. Barnes, 95 Kan. 798 at 802, 149 P. 691 (1915). Similar statements are made in Mittel v. Karl, 133 Ill. 15, 24 N. E. 553 (1890); Arnold v. Jack's Exrs., 24 Pa. St. 57 (1854); McLeroy v. McLeroy, 163 Tenn. 124, 40 S. W. (2d) 1027 (1931); Rowland v. Rowland, 93 N. C. 214 (1885).

[43] 290 Mich. 215, 287 N. W. 439 (1939).

[44] "It shall not be necessary to use the words 'heirs and assigns of the grantee' to create in the grantee an estate of inheritance; and if it be the intention of the grantor to convey any lesser estate, it shall be so expressed in the deed." 3 Mich. Comp. Laws (1929), § 13323. For the effect of a transfer by devise, see 3 Mich. Comp. Laws (1929), § 13479: "Every devise of land in any will hereafter made, shall be construed to convey all the estate of the devisor therein which he could lawfully devise unless it shall clearly appear by the will that the devisor intended to convey a less estate."

[45] "Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy, and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter." 3 Mich. Comp. Laws (1929), § 12963.

[46] 3 Mich. Comp. Laws (1929), § 12964, quoted in note 33, supra.

[47] "All persons holding lands as joint tenants or tenants in common, may have partition thereof, in the manner provided in this chapter." 3 Mich. Comp. Laws (1929), § 14995.

manner, by sale,[48] or by execution, levy and sale.[49] The incidental right of survivorship exists.[50] Since common-law joint tenancy exists in Michigan, the construction creating an estate for joint lives with contingent remainder over to the survivor is not necessary in order to allow a right of survivorship.

The only remaining basis for the holding would be the intent of the grantor to create something other than joint tenancy since he expressly provided for survivorship. The answer to this is that such an insertion can be rationally explained as a precautionary measure to meet the statutory requirements requisite to the creation of a joint tenancy. Stronger words than "and to the survivor thereof" should be used to create a joint life estate and contingent remainder in fee to the survivor. If such were the intention of the parties, it should be provided for in express language.

The decision in *Ames v. Cheyne*[51] seems unfortunate in that it construes the deed to create a remainder preceded by a joint life estate rather than a joint tenancy in fee. The latter was a possible construction and, if adopted, the right of survivorship would be allowed, subject to being defeated by termination of the joint tenancy by destruction of any one of its four unities.[52] It seems that the destructibility of survivorship is considered good policy, judging from the statutes abrogating the right and the ancient aversion of equity thereto.[53] Consequently it is regrettable that the court in *Ames v. Cheyne* created an indestructible right of survivorship when another possible construction was open to it whereby survivorship might be destroyed by severance of the joint tenancy.

*John H. Pickering*

[48] Smith v. Smith, 290 Mich. 143, 287 N. W. 411 (1939).

[49] Execution, levy and sale was allowed upon the interest of one joint tenant under a deed running to *A* and *B* "and the survivor of either of them." The court said that the joint estate was severable by the acts of the parties or by levy and sale. The case is not clear as to whether a joint estate for life or a joint estate in fee was created. Midgley v. Walker, 101 Mich. 583, 60 N. W. 296 (1894). The holding has been explained as providing only for sale of a joint tenant's interest, whether for life or in fee. See Finch v. Haynes, 144 Mich. 352, 107 N. W. 910 (1906).

[50] Norris v. Hall, 124 Mich. 170, 82 N. W. 832 (1900); Smith v. Smith, 290 Mich. 143, 287 N. W. 411 (1939).

[51] 290 Mich. 215, 287 N. W. 439 (1939).

[52] 2 BLACKSTONE, COMMENTARIES 185; 2 TIFFANY, REAL PROPERTY, 3d ed., § 425 (1939). See Smith v. Smith, 290 Mich. 143, 287 N. W. 411 (1939), holding discussed supra.

[53] See note 11, supra. Also Phelps v. Jepson, 1 Root (Conn.) 48 (1769); 2 TIFFANY, REAL PROPERTY, 3d ed., §§ 419, 421 (1939).