

tion by referring the event of the death of the primary grantees in remainder to the period antedating the expiration of the preceding life estate, and by holding that as Mrs. Adelaide S. Thomas died during that period, leaving the plaintiffs as her issue, they are invested by the express terms of the deed with the share of the estate to which their mother would have been entitled if she had survived the life tenant. As the other three daughters named in the will have lived beyond the period to which the contingency of their death, with or without issue, is to be referred, the fee simple interests which were conveyed to them, subject to the contingency, have become vested and indefeasible.

In view of the construction we have just placed upon the deed it is not necessary to discuss the suggestion offered in the argument that the limitation depended upon the death of any of the daughters without leaving issue was void under the rule against perpetuities inasmuch as the conveyance was made prior to the Act of 1886, chapter 236, Code Art. 21, Sec. 90, which, provided, as to deeds that such dispositions should be construed as importing a failure of issue at the death of the person to whom the contingency related. None of the remaindermen whose interests we are ascertaining have died without issue, and the period to which the occurrence of that possible event was intended to be referred by the deed has now passed.

There is yet to be considered, however, the effect of the deed executed by the daughters purporting to convey their interests in the property. The deed of March 21st, 1894, to Robert E. L. Kanode, which was executed by all four of the daughters, in conjunction with their mother, must be held to have been inoperative as to the daughters, because they were all married women and their respective husbands did not join in the conveyance. It is well settled that such joinder was indispensable to the efficacy of their deed, as it was executed prior to the act of 1898, Chapter 457, Sec. 4, Code Art. 45 Sec. 4 Klecka Vs. Zeigler, 81 Md. 484; Griffin Vs. Blandin, 80 Md. 136; Frazee vs. Frazee, 79 Md. 29; Armstrong Vs. Kerns, 61 Md. 366; Code 1888, Art. 45, sec. 2. The conveyance to Mr. Kanode and his re-conveyance to Mrs. Anna Mary Thomas, the life tenant, did not result in conferring upon her any other or greater interest in the property than the life estate to which she was entitled under the original grant.

In reference as to the question raised as to the effect of the deed from the life tenant evidently attempting to convey the entire title to her daughter, Mrs. Day, and of the deed from the latter and her husband purporting to re-convey the property, and of the will of the mother in so far as it may relate to the interests of Mrs. Day in the premises, we can find no proper jurisdictional basis for their decision as the case is now presented. The right of the plaintiffs to a decree of sale does not depend upon the settlement of any conflict of interest as between Mrs. Day and the estate of her mother. No such issue is raised by the Bill, nor is it joined in the answers as between the parties concerned in its determination. Whatever may be the relative rights of Mrs. Day and the estate of Mrs. Anna Mary Thomas as to the share of the property granted in remainder to the former by the deed of Jacob R. Kline, as those rights may be determined in connection with the distribution of the proceeds of the property, in appropriate supplemental proceedings in the cause, it is apparent that the interests with which the suit, as now pending, has to deal are in any event concurrent, and as the property is conceded to be unsusceptible of partition without loss and injury, the case is a proper one for a sale and division among the persons entitled.

As one of the parties interested, however, is an infant, and as no proof has yet been taken to establish the jurisdictional facts, although they have been admitted in the answers of adult defendants, a decree will not now be passed, but leave will be granted the parties to take testimony for the purpose indicated, before one of the standing examiners of the Court, and it is accordingly so ordered this 18th day of July A. D. 1914.

Hammond Urner
Glenn H. Worthington.