

**Hunt**  
**v.**  
**Blackburn.**

**No. 16.**

**128 U.S. 464 (1888)**

**Supreme Court of United States.**

Submitted November 1, 1888.

Decided November 26, 1888.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

[\*469] *Mr. J.B. Heiskell* for appellant.

No appearance for appellees.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

Undoubtedly, at common law, husband and wife did not take, under a conveyance of land to them jointly, as tenants in common or as joint tenants, but each became seized of the entirety, *per tout, et non per my*; the consequence of which was that neither could dispose of any part without the assent of the other, but the whole remained to the survivor under the original grant. 2 Bl. Com. 182; 2 Kent's Com. 113; 1 Washburn, Real Prop. (4th ed.) 672. Nor had this rule been changed at the time of these transactions by the constitution or statutes of Arkansas. **Robinson v. Eagle, 29 Arkansas, 202.** But it was also true at common law, that, as "in point of fact, and agreeable to natural reason, free from artificial deductions, the husband and wife are distinct and individual persons; and, accordingly, when lands are granted to them as tenants in common, thereby treating them without any respect to their social union, they will hold by moieties, as other distinct and individual persons would do." 1 Preston on Estates, p. 132; 1 Inst. 187 b; 1 Washburn, Real Prop. (4th ed.) p. 674; **McDermott v. French, 15 N.J. Eq. (2 McCarter) 78, 80.**

The Supreme Court of Arkansas and the Circuit Court of Desha County must have proceeded upon the conclusion that Buck and his wife held by moieties, in decreeing that, through their conveyance, Drake and Winfrey became the owners in fee, successively, of Buck's undivided half of the lands in question; and the decrees of these two courts to that effect, standing unreversed, would seem to be binding adjudications in favor of complainant's title.

[\*470] In the Circuit Court case Mrs. Buck sought and obtained a decree quieting her title to an undivided half as between her and Buck's heirs and Drake, Buck's grantee, and holding a tax title to have been acquired for the benefit of Drake and herself, and she is to be held to have embraced her whole cause of action in one suit. In the Supreme Court case she had joined with

Drake, in seeking relief as co-owners, against an execution sale of a parcel of the land, the rectification of a mistake in the deeds, and the vesting of title in herself and Drake, and the compelling Winfrey to accept title to the Drake half, and that relief was in substance accorded by the decree.

Under such circumstances it cannot be denied that Hunt was justified in advancing his money upon the strength of the Drake-Winfrey title.

Defendant Blackburn insists, however, in her answer, that the part she took in the litigation of these two cases was the result of misplaced confidence in her counsel, by whom she alleges she was deceived, misadvised and misled; that she was ignorant of her rights; and that she ought not to be held estopped in the premises, while at the same time, it is objected on her behalf, that her attorney, on the ground of privileged communications, should not be permitted to defend himself by testifying to the facts and circumstances under which he advised her and the advice which he actually gave.

The rule which places the seal of secrecy upon communications between client and attorney is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure. But the privilege is that of the client alone, and no rule prohibits the latter from divulging his own secrets; and if the client has voluntarily waived the privilege, it cannot be insisted on to close the mouth of the attorney. When Mrs. Blackburn entered upon a line of defence which involved what transpired between herself and Mr. Weatherford, and respecting which she testified, she waived her right to object [\*471] to his giving his own account of the matter. As, for instance, when she says that the original deed from Shepard was drawn by Weatherford, that she has not got it, and that she thinks she gave it to him, it is clear that her letter of July 6, 1875, calling for that deed, and Weatherford's reply of July 14th, enclosing it, are admissible in evidence.

But, apart from Weatherford's evidence, the testimony of Mrs. Blackburn and Drake, together with the documents in the case, fail to satisfy us that there was any deceit or misapprehension in the premises, or any advice given Mrs. Blackburn in fraud or in mistake of fact or law. Buck and his wife purchased the separate halves at different times, and with the intent of holding in moieties, and conveyed Buck's half to Drake, who paid therefor in good faith and without actual notice. The second deed of Shepard was so drawn as to run directly to Buck and wife, and upon the language in which it was couched this claim is set up. And yet that second deed was given, on request of Drake's attorney, at the very time when Buck and his wife were conveying to Drake for valuable consideration. The injustice of allowing Mrs. Blackburn to insist, years afterwards, that by that deed she acquired an estate by entirety is too apparent to need comment; nor could such deed divest the title which had once vested in her husband and herself by the former conveyance from the same grantor, nor alter its nature.

*The decree will be reversed and the cause remanded for further proceedings in conformity with this opinion.*