"As tenants in common are two or more persons who hold possession of any subject of property by several and distinct titles, the word "jointly" can find no place in describing an estate to be held by them." See, also, *Davis* v. *Smith*, 4 Harrington (Del.), 68.

The four unities which are the requisites of joint tenancy all here exist.

The judgment, therefore, will be that, on the true construction of the will, Martha S. and John W. Campbell became joint tenants, and that he is now solely entitled by *jus accrescendi*.

Costs to all parties out of the estate.

Counsel referred also to the following authorities: Ency. of Laws of England, vol. 7, p. 513; Jarman, 6th ed., 1783, *et seq.*; *Re Gamble*, 13 O. L. R. 299; Wharton, 7th ed., 392; *Kew* v. *Rouse* (1685), 1 Ver., 353; Am. & Eng. Ency., 2nd ed., vol. 17, 658; *Richardson* v. *Richardson*, 14 Sim. 526.

HON. MR. JUSTICE SUTHERLAND. NOVEMBER 4TH, 1912.

BAECHLER v. BAECHLER.

4 O. W. N. 226.

Executors and Administrators—Motion under C. R. 938, and Trustee Act, 1 Geo. V., c. 26, s. 75—Deduct Debt from Legacy—Improper Motion under Rule.

Motion by the defendants, the executors of the late Xavier Baechler, under Con. Rule 938, and the Trustee Act, 1 Geo. V., c. 26, s. 75, for an order authorizing them to deduct from a legacy of $1,000, sued for in this action, the sum of $754.56, claimed to be due and owing the estate by the estate of the legatee. Plaintiff, administratrix of the legatee, disputed that any sum was due as claimed by his estate.

SUTHERLAND, J., *held*, that the motion was an improper one under the Rule, and enlarged same until trial.

Costs of motion to be in discretion of trial Judge.

Re Rally, 25 O. L. R. 112, and *Re Turner*, 22 O. W. R. 543, referred to.

J. D. Montgomery, for the defendants' motion.

C. Garrow, for the plaintiff.

J. R. Meredith, for the infants.

HON. MR. JUSTICE SUTHERLAND:—Xavier Baechler, the elder, by his last will, dated February 1st, 1906, bequeathed to his son Xavier Baechler, the younger, the sum of $1,000. The latter died on the 27th September, 1906, and the