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CHANCERY.

Lambe v. Eames.

Will—Construction—Whether trust or absolute gift

A testator bequeathed to his wife a freehold house and all his personal property, "to be at her disposal in any way she may think best for the benefit of herself and family."

Held, (affirming the decision of Vice-Chancellor Malins), that this was an absolute gift to the wife.

[19 W. R. 659.]

This was an appeal from a decision of Vice-Chancellor Malins (18 W. R. 972).

By his will dated 13th March, 1833, John Lambe, who was a tradesman carrying on his business at No. 29, Cockspur Street, of which house he owned the freehold, and who was then a man not much advanced in years and having a young family, willed and bequeathed to his wife, Elizabeth Lambe, his said freehold house, and also all his personal property, consisting of stock-in-trade, book debts, and household furniture, and property of every description belonging to him, the whole of the aforesaid property "to be at her disposal in any way she may think best for the benefit of herself and family."

The testator died in 1851, leaving his wife surviving. She, by her will dated the 28th April, 1857, devised her "freehold messuage No. 29 Cockspur Street" to trustees, upon trust for her daughter Elizabeth Eames for her life, subject to and charged with the payment of an annuity of £70 to her grandson, Henry Lambe, during the life of her daughter, and on her death the testatrix directed her trustees to divide the rent between her grandchildren, Henry Lambe and Charles Eames (son of the daughter Elizabeth Eames) in equal shares during their joint lives, and upon the death of either of them she devised the house in fee to the longest liver of them. The testatrix died in January, 1865, and thereupon the daughter Elizabeth Eames entered into possession of the house. The grandson, Henry Lambe, was an illegitimate son of a son of the testator and his wife. He was born during the life of John Lambe, but after the date of his will. This suit was instituted by Henry Lambe against Elizabeth Eames and her husband and the surviving trustee of the will of the testator, to enforce payment of the annuity given to the plaintiff by Elizabeth Lambe's will.

The Vice-Chancellor held that the plaintiff was entitled to his annuity, and Mr. and Mrs. Eames appealed.

Bristowe, Q C., and *W. Barber* for the appellants.—The gift to the testator's widow is, we contend, an imperative trust, with a discretion only as to the mode of division among a certain class, in which class the plaintiff is not included. It is, in fact, a life estate to the widow with a power of appointment after her death; *Woods* v. *Woods*, 1 My. & Cr. 401; *Raikes* v. *Ward*, 1 Hare, 445; *Crockett* v. *Crockett*, 1 Hare 451, 2 Phil. 553; *Salusbury* v. *Denton*, 5 W. R. 865, 3 K. & J. 529; *Scott* v. *Key*, 13 W. R. 1030, 35 Beav. 291; *Godfrey* v. *Godfrey*, 11 W. R. 554; *Brook* v. *Brook*, 3 Sm. & G. 280; *Audsley* v. *Horn*, 8 W. R 150, 1 De G. F. & J. 226; *Gully* v. *Cregoe*, 24 Beav. 185; *Shovelton* v. *Shovelton*, 32 Beav 143; *Reeves* v. *Baker*, 2 W. R. 354, 18 Beav. 372. Even if the widow was at liberty to dispose of part or the whole of the capital during her life, still, whatever was left at her death was subject to a trust for her family, a class to which the plaintiff does not belong. As to the meaning of the word "family," they referred to *Lucas* v. *Goldsmid*, 8 W. R. 759, 29 Beav. 657; *Wood* v. *Wood*, 3 Hare, 65; *Parkinson's Trust*, 1 Sim. N. S. 242; *Griffiths* v. *Evan*, 5 Beav. 241; *Alexander* v. *Alexander*, 5 W. R. 28, 2 Jur. N. S. 898, 2 Jarman on Wills (3rd ed.) 82 *et seq.*

In the course of the argument, *M'Leroth* v. *Bacon*, 5 Ves. 159; *Robinson* v. *Waddelow*, 8 Sim. 134; *Doe* v. *Joinville*, 3 East, 172, were also referred to.

Cotton, Q. C., and *Warner* for the plaintiff.—There is no obligation or trust that can be enforced in this Court. That a trust may be enforced there must be a defined property affected and definite objects. Here the property is indefinite, for the widow might clearly have spent any part of it she pleased in her lifetime, and the objects of the trust are not ascertained, for the word "family" is too indefinite. The words which are said to create a trust or obligation are really nothing more than a statement of the testator's motive in making the absolute gift to his wife. He wished that after his death she should occupy his position as head of the family.

They referred to *Morice* v. *The Bishop of Durham*, 10 Ves. 535; *Knight* v. *Knight*, 3 Beav. 148; *Green* v. *Marsden*, 1 W. R. 511, 1 Drew. 646; and also to *Dickenson* v. *Wright*, 8 W. R. 418, 5 H. & N. 401, 6 H. & N. 849; as showing that a provision for an illegitimate child will support an instrument otherwise voluntary as against a subsequent purchaser for value.

Bristowe, Q.C., in reply, referred to *Smith* v. *Smith*, 2 Jur. N. S. 967; *Barnes* v. *Patch*, 8 Ves. 604; *Williams* v. *Williams*, 1 Sim N. S. 358.

Heath for the trustee.

James, L.J., was of opinion that the decision of the Vice-Chancellor was perfectly right. If this will had to be construed independently of any authority whatever he thought its meaning would not be open to any reasonable doubt. The will was that of a tradesman who was carrying on business in Cockspur Street. He was when he made it in the prime of life, and had a wife not advanced in years, with a young family. He made his will in these terms:—[His Lordship read them]. The question was whether those words created any trust affecting the property. On hearing case after case cited, which had been referred to, his Lordship could not help feeling that the officious kindness of the Court of Chancery, in interposing trusts in many cases where the testator never intended anything of the sort, must have been a very cruel kindness indeed. In the present case his Lordship was satisfied that the testator would have been shocked had he been told that any one of his infant children could have instituted immediately after his death a suit in this court by a next friend for what was called the administration of the trusts of his will. His Lordship was satisfied that no trust was intended, and that it would have been a violation of the wishes of the testator if his