
DOES A WILL OPERATE FROM DEATH?

It is a common saying among practitioners that a will speaks from the death of the testator. That statement, however, is elliptical and inaccurate. Sec. 24 of Wills Act (1 Vict. c. 26) Imp. enacts in effect that a will shall be construed, with reference to the real estate and personal estate comprised in it, to speak as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. That section only applies to property and not to persons or objects; this was decided as long ago as *Bullock v. Bennett* (7 De G. M. & G. 283). In *Re Whorwood*; *Ogle v. Lord Sherborne* (55 T. Rep. 89; 34 Ch. Div. 446), where a testator bequeathed a silver cup to Lord S. and his heirs as an heirloom, and the person who was Lord S. at the date of the will died before the testator, leaving a successor to the title, it was decided by the Court of Appeal, affirming the decision of Mr Justice North, that the bequest lapsed. There are, however, various exceptions to this general rule, as, for instance, in gifts to persons holding an official position, or to classes, such as children. In those cases the persons answering the description at the testator's death take. With regard to property, the question what is a contrary intention within the meaning of sec. 24, so as to confine the gift to property existing at the date of the will, is not always an easy one. If the testator gives all the messuage and land now occupied by him, a close of land taken into occupation by him after the date of the will will not pass, notwithstanding the 24th section: (*Hawkins on Wills*, p. 20; and see *Re Willis*; *Spencer v. Willis*, 105 L.T. Rep. 295; (1911) 2 Ch. 563). But the word "my" alone is not always sufficient to shew a contrary intention. In *Goodlad v. Burnett* (1 K. & J. 348) a bequest of "my new $3\frac{1}{4}$ per cent. annuities" was held to comprise all the new $3\frac{1}{4}$ per cent. annuities that the testatrix held at her death. Vice-Chancellor Wood in that case said: "When I refer to a particular thing, such as a ring or a horse, and bequeath it as 'my ring' or 'my horse,' it seems to me there might be considerable difficulty in saying that the 'contrary intention' to which the Act in its 24th section refers does not appear on the face of the will; but when