

The objections were: (1) that the description contained in the conveyance under which the vendors held title was not the proper or legal description of the said lands; (2) that the will of the late August Bauer did not transfer the absolute estate in fee simple to his widow Charlotte Bauer, one of the predecessors in title of the vendors.

W. C. Greig, for the vendors.

W. Greene, for the purchaser.

A. C. T. Lewis, for the Official Guardian.

LATCHFORD, J.:—The first objection I disposed of on the argument by holding the description sufficient.

I reserved for consideration the second objection, although I expressed at the time the opinion that the widow had but a life estate.

August Bauer, the owner in his lifetime of the lands in question, made his will shortly before his death in 1898, in the following words: "I leave my property to my wife to share with the childring at her death as she thinks fit."

The will was duly attested; and the widow in March, 1909, took out letters of administration with the will annexed; and, assuming that she was absolutely entitled to the lands in fee simple, executed a conveyance in fee to the vendors, who in turn have contracted to sell to the purchaser.

It is contended on the part of the vendors that under the will in question the children took no interest, and that the conveyance which they (the vendors) have received from Mrs. Bauer vests in them the fee.

I am quite unable to adopt this view. The gift to the testator's wife is, in effect, like that considered in *Burrell v. Burrell* (1778), 1 Ambl. 660. There the testator gave all his property to his wife, to the end that she might give her children such fortunes as she thought proper or as they best deserved. The case came before the Court upon a question as to whether the power had been properly exercised by the widow, who had given a merely nominal sum to one of the children; but nowhere was it suggested that the widow was absolutely entitled.

In the present case Bauer imposed an obligation upon his widow to share with or among his children at her death the same property which he gave to her. She took but a life estate, with power of appointment among the children. She could not convey to the vendors more than she received under the will; and the vendors are unable to convey in fee to the purchaser.

There will be an order accordingly. Costs to be paid by the vendors.