

I would call attention to the extremely inconvenient practice followed in this case, of omitting to specify the questions complained of, in the notice of motion.

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HON. MR. JUSTICE MIDDLETON.

APRIL 9TH, 1913.

RE SOULLIERE AND McCracken.

4 O. W. N. 1092.

*Will—Construction—Precatory Trust.*

MIDDLETON, J., *held*, that the following clause in a will following an absolute gift:—"It is my desire that she takes good care of all my children as much as it is possible to do and I also desire that at her death she will divide the estate that I now give her among our children in the most just manner possible" did not constitute a precatory trust.

*Johnson v. Farney*, 24 O. W. R. 244, referred to.

An application under the Vendors and Purchasers Act, turned by consent into an application for the construction of the will, of David Soullière, under Con. Rule 938.

F. D. Davis, for the vendor.

J. Grayson Smith, for the purchaser.

J. R. Meredith, for the infants.

HON. MR. JUSTICE MIDDLETON:—The sole question turned upon the construction of the will of David Soullière. He gives all his real and personal property to his wife, the vendor: adding this clause, "It is my desire that she take good care of all my children as much as it is possible to do, and I also desire that at her death she will divide the estate that I now give to her among our children in the most just manner possible."

It is said that this constitutes a precatory trust and that it operates to cut down the gift to a life state with the power of appointment among the children.

At one time this would probably have been so; but the tendency of the more recent legislation is all the other way. I think that in this will the gift to the wife is absolute, and that the clause quoted recognizes this and falls far short of what is now regarded as necessary to cut down the absolute estate given.