

houses, the balance shall be placed in a bank to the credit of the heirs of this said property."

The question is, whether Lily and Harry Smith take the fee simple upon attaining 21, or are entitled only to be maintained and educated out of the income during infancy with the fee vested in the two sons (executors) subject to being divested in favour of the Eustice grandchildren if Lily and Harry Smith die before attaining 21. The alternative to the two Smith grandchildren taking the fee at 21 is so absurd as to render it quite apparent that the testator could have had no such intention. The will presented a striking example of a case in which those really intended to be benefited take an estate by implication.

A gift to A. till 21, with a gift over if he dies under 21, gives A. an absolute estate in fee, defeasible upon death under 21: Theobald on Wills, 7th ed., p. 736; and, while a simple gift to trustees in trust for A. until he attains 21 will not give A. the absolute interest, very slight indications of intention will in that case also give the absolute interest: Theobald, p. 736.

There was nothing to shew any intention to benefit the two sons, but much to shew the contrary intention.

There was a gift to the two sons as trustees, in trust to collect the rents and profits, and thereout, after providing for "all reasonable charges," etc., to apply such portion of the income as in their opinion should be reasonably sufficient, when added to the earnings of the two Smith grandchildren, for their maintenance and education until they should attain 21, and as each attains 21 he or she will be entitled to an undivided half interest in fee in the land, and if either dies before attaining 21 the other upon attaining 21 will be entitled to the whole.

Order declaring accordingly; costs of all parties, as between solicitor and client, should be paid by the estate.

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ORDE, J.

SEPTEMBER 9TH, 1920.

#### RE BROWN AND BLYTH.

*Settlement—Voluntary Conveyance of Land to Person in Trust for Heirs of Grantor—Reconveyance by Trustee—Application under Vendors and Purchasers Act for Declaration that Grantor can Make Title to Land—Unascertained Class of Beneficiaries—Powers of Court under Act and under Rule 602—Revocation of Settlement.*

An application by a vendor of land, under the Vendors and Purchasers Act, for an order declaring that the vendor can make a good title to the land.