

Err. & App.]

IN RE GOODHUE, ETC.

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wrong-doer to the transferee, as by similar acts he would have been to the prior owner in his lifetime.

These are mere truisms, but they have their application to the present case.

The testator intended that his residuary estate should accumulate during the life of his widow. He intended, also, that the children of any of his children who died in the lifetime of his widow should take their parents' share, and he provided for both these matters in language as clear as that used by him in making gifts to his children. But his intention evidently has met neither their wishes nor their expectations, and, therefore, by the deed of 26th September, in which there are no other considerations suggested than these—because the residuary estate exceeds \$300,000: because "it is desirable" that the children should get their shares immediately, rather than that they should wait for the period fixed by the testator, and because they executed that deed to secure to each child such immediate possession by an immediate division of this large residue, they mutually agree on a mode of division which shall bind them; and because it was "doubtful" whether their arrangements could be legally assented to and carried out by the trustees by reason of the coverture of several of the parties, and also from the insufficiency of the powers of the trustees under the will, they agree to apply to the Legislature to confirm their arrangements, and to compel the trustees to carry them out in place of those stated in the will; in other words, to abrogate the disposing power of the testator after he had unequivocally exercised it, and to take away the possibility which the will had created in favour of grandchildren—in short, to deprive him of powers which the law had given him.

The concurrence of the widow is really of no importance; for, in fact, the deed does not prejudice any of her interests arising under the will; on the contrary, it seems designed to secure them to the fullest extent.

I think that, on the death of the testator, the rights of his children under his will became vested in interest, though not in possession; but that they were liable to be defeated as to each child if he or she should die in the lifetime of the testator's widow, in which case the interest of such child vested in his or her children, but was still postponed as to possession till the death of the widow. The promoters of the Act sought to have their interest given to them in possession.

The Legislature have passed such an Act as the parties applying desired. They have, in effect, altered the testator's will—not to supply a defect, which rendered it difficult or impossible for his trustees to carry his intentions into effect—but to substitute an intention contrary to what he has expressed, by rendering the accumulation impossible, and making the division immediate which he directed should await the death of his widow.

It would be indecorous to express what it would be fitting for a Court to express if such changes had been procured in the testator's lifetime, by or through any fraud, or imposition

upon him. It is now, if a valid Act, the Act of the highest authority—an Act of our Legislature, which has received the assent of the head of the Local Executive on behalf of the Governor-General. It cannot, however, be disrespectful to quote the language of Lord Tenterden. "It is said the last will of a party is to be favorably construed, because the testator is *inops consilii*. That we cannot say of the Legislature; but we may say that it is '*magnas inter opes inops*.'" *Surtees v. Ellison*, 9 B. & C., 752.

No English authority has been cited, nor do I think there is any, which would warrant our denying the power to pass such an Act. There may be cases in which the decisions look in the direction of neutralizing the enactment by construction, or in which a long series of decisions have, as it were, fined away the force of the language used, so as apparently to disappoint the intention of its framers; but they do not apply here.

Among the classes of subjects with regard to which exclusive power is given to the Provincial Legislatures to make laws, we find "property and civil rights in the Province," and "generally all matters of a merely local or private nature in the Provinces." I cannot say that the present is not a matter belonging to one or other of these classes.

Nor do I think that we can derive any help from American authorities, though there is much to be found full of valuable suggestion to those who wield the Legislative power. For, as in England, it is a settled principle that the Legislature is the supreme power, so in this Province, I apprehend that within the limits marked out by the authority which gave us our present Constitution, the Legislature is the supreme power. It is on this principle that private Acts of Parliament are upheld as common modes of assurance, being founded upon the actual or implied assent of those whose interests are affected.

But this power of binding private rights by Acts of Parliament is, as Sir W. Blackstone suggests, to be used with due caution, and upon special necessity; as to cure defects arising from the ingenuity or the blindness of conveyancers, or from the strictness of family settlements, or in settling an estate, as where the tenant of the estate is abridged of some reasonable power; or to secure the estate against the claims of infants, or other persons under legal disabilities. In these or the like cases "the transcendent power of Parliament is called in to cut the Gordian knot." (Parl. His., Vol. IV., p. 247.) The restoration of Charles II. gave rise to a good deal of this private legislation, and at the close of the Session (13 Ch. II., 1661) His Majesty observed on the unusual number of Private Bills, "But I pray you let this be done very rarely hereafter. The good old rules of the law are the best security. And let not men have too much cause to fear that the settlements that they make of their estates shall be too easily unsettled *when they are dead*, by the power of Parliaments."

It may not be too much to suggest that, in the absence of a second Chamber, and to secure the interposition of full discussion and patient consideration between the introduction of private