

Err. &amp; App.]

IN RE GOODHUE, ETC.

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the management thereof, and may generally be to the purport and effect which, in the discretion of the said court or judge, shall seem meet.

Now, it is an undoubted principle of natural justice, that the rights of parties interested in property, or claiming so to be, shall not be adjudicated upon or disposed of by any court of justice in the absence of such parties, or without their being given an opportunity, to assert their rights. To attribute to the Legislature an intent of subverting this universally recognized principle is what I cannot permit myself to do, unless I shall find that intent expressed in such language as is incapable of being mistaken; if the language be doubtful, I must construe the doubtful language so as to maintain and support inviolate a principle so universally recognized, instead of to subvert it. Bearing in view this sacred principle, and seeing no intention expressed in the Act upon the part of the Legislature to subvert it, this third section presents to my mind the clearest evidence that the Legislature was proceeding upon the basis adopted as the frame of the deed, and the assumption therein apparent, that all parties really interested were parties to the deed, when it provided that the notice of the proceedings in the court was to be given only to the parties to the deed and the trustees. I cannot interpret the language of this third section as providing that the interests, if any there be, of persons strangers to the deed shall be adjudicated upon or disposed of by the court in their absence, or that any such adjudication shall, contrary to the principles of natural justice, be binding upon such strangers so kept in ignorance of all such proceedings. The language of the section seems to me to expressly confine and limit the jurisdiction of the court and judge to the jurisdiction which, according to the established and well-known principles of equity, the court would have, in case a bill were filed for the like purpose, and if a bill were filed, all parties having any interest in the subject-matter in respect of which the jurisdiction of the court was invoked, should have to be brought before the court; moreover, it is apparent from the words "and may generally be to the purport or effect which in the discretion of the court or judge shall seem meet," that everything which the court or judge shall do in the premises is left open to the inquiry and the adjudication of a superior tribunal, as to the manner in which, in the given case, such discretion has been exercised; and I must say, that an order made in the absence of infants claiming to be interested in a testator's estate, to which order, when made, is attributed, rightly or wrongly, the effect of depriving the infants of the right to have the question of their asserted claims inquired into and adjudicated upon by the court, upon a bill filed for that purpose, according to the ordinary practice of the court, can in no sense, in my judgment, be said to be an order made in the exercise of a sound discretion, and can have no effect whatever so as to bind or bar the right of the infant claimants to have their claims entertained and adjudicated upon in a suit instituted on their behalf.

But this third section presents further evidence to my mind that it was not the intention

of the Legislature to subvert the testator's will by transferring to his children estates not vested in them in interest by the will, and which, by possibility, might become the property of his grandchildren, and not of his children, but simply to expedite the enjoyment of estates assumed to be vested in interest; for the trusts of the will are, by the third section, regarded as still continuing in existence, and, as I read the Act, in all other respects than in so far as the authorizing the transfer of the immediate possession of estates, vested in interest, is an interference with these trusts. It is in respect of the management of the trusts of the will, or the disposition of the proceeds of the trust estate, or in respect of any matter connected therewith, or in regard to which the court would have jurisdiction in case a bill were instituted in the court, that the summary proceeding is authorized. Now, if the court would not have, and it cannot be contended that it would have, irrespective of the Act, jurisdiction on a bill filed by the children against the trustees, to compel them to convey to the testator's children estates not devised to them, then the statute gives no jurisdiction to do so by the summary proceeding authorized, and an order directing such a transfer to be made is, in my opinion, an order beyond the jurisdiction of the court to make.

But whatever may be the decision of the court upon the hearing of the cause instituted by the infants, and the trustee, Mr. Becher, who in the discharge of the trust reposed in him by the testator appears to have been in duty bound to invoke by bill the interference of the court—whatever may be the proper construction to put upon the statute, whether or not it shall be found that its operation is absolutely to deprive the testator's grandchildren of the benefit of the testator's bounty, although they, and they only, by reason of all their parents, the testator's children, dying in the life-time of his widow, should prove to be the persons entitled as devisees of the whole of the testator's residuary estate, the infant plaintiffs and their trustees have, in my judgment, an undoubted right to have the adjudication of the court by a decree upon that subject, before the infants, who are no parties to the deed to which the statute relates, and who are not mentioned or referred to in the statute, can be said to be barred of rights which, if any they have, exist wholly independently of the deed, and not by privy with any of the parties thereto.

In so far as the bill and the demurrers thereto are concerned, the case, as it seems to me, may be thus stated. That certain of testator's grandchildren, who may become entitled under the trusts of the will to certain estates thereby devised, and one of the trustees of the will, who is not acting in concert with testator's children file their bill, in effect alleging that the testator's children, claiming to be, and alleging that they are, beneficially seized of estates vested in interest (with period of enjoyment postponed) in the testator's residuary estate, have caused to be prepared a deed which they have executed, whereby, reciting that they are entitled to estates vested in interest in the testator's residuary estate, with the period of entering into posses-