

HON. MR. JUSTICE MIDDLETON.

APRIL 1ST, 1914.

RE KELLY & GIBSON.

6 O. W. N. 173.

Will—Construction—Gift to Wife—"For Best Advantage of Herself and Son"—Absolute Gift—Precatory Trust—Tendency against—Vendor and Purchaser Application—Notice to Official Guardian—Costs.

MIDDLETON, J., *held*, that a gift by a testator to his wife of all his real and personal property "to be used by her for the best advantage as she considers best for herself and our infant son" was an absolute gift.

Lambe v. Eames, L. R. 6 Ch. 597, referred to.

Motion by vendor to determine a question as between vendor and purchaser arising upon the construction of the will of the late J. J. Kelly.

G. R. Roach, for vendor.

E. C. Cattnach, for infant.

HON. MR. JUSTICE MIDDLETON:—Pursuant to Rule 602, I directed the guardian of the infant to be notified.

By the will of the testator he gives all his real and personal property "to my wife Margaret Helena Kelly, to be used by her for the best advantage as she considers best for herself and our infant son Joseph Charles Kelly."

I think this is an absolute gift to the wife. The case is very like *Lambe v. Eames*, L. R. 6 Ch. 597. The whole modern tendency is against the creation of a precatory trust, unless the language is plain.

The order will therefore declare that a good title can be made, and there will be no costs as between vendor and purchaser. The vendor must pay the costs of the official guardian.