

## WHAT MAY WE DO WITH OUR OWN?

(From the Solitors' Journal.)

We understand that, at a recent convivial meeting, but which has hitherto attracted little or no attention, was started by a learned conveyancer, and that the debate thereon, as conducted by A., B., and C., was to the following effect:—

A.—I have had a doubt as to the soundness of the practice of conveyancers, with respect to separate provisions for married women, in not making any distinction between adults and infants. Is it clearly correct?

B.—Settlement of money—Trust for a married female *infant* for her life for her separate use—Declaration by the settlor that the trustees shall be accountable for the income, during her infancy, only to him, and that, as between settlor, his executors, &c., and the trustees, her receipts, notwithstanding her *infancy*, shall be good discharges. Would not that be good? Put these cases—

1. You give me sixpence to give to a boy who sweeps a crossing. I give it. Am I discharged of the sixpence?

2. Legacy to be given by executors to deserving poor. They give £5 to a distressed needlewoman, aged 20. Are they not discharged?

3. I buy a pair of gloves in a shop of a boy aged 15, and pay him 3s. 6d. Am I discharged?

4. Must you inquire of a lad, who serves out railway tickets, whether he is of age, in order to be safe in paying him for them?

A.—When you (B.) advance unsound propositions and essay to defend them, you may exclaim, with just exultation, "*Si Pergama deatra defendi possent etiam hac defensa fuissent.*"

1. Your first instance is that of income devoted to the separate use of a female infant covert. If payment to her would be good at all, I submit that it would be warranted only as she may be deemed, either the agent of her husband (which, in point of law, she may be), or the recipient of his bounty (which her infancy would not prevent her from accepting); for I conceive that she cannot have the income directly to her separate use in the ordinary legal, or rather equitable, acceptance of that term, because she cannot exercise any substantive, independent, discretion. It is familiar that an infant cannot execute a power, and what is money but power? Unless it proceed from the husband, I know of no legitimate channel through which it can reach her so as to be at her sole disposal. It cannot be considered as a "bread-and-butter-girl's" pocket money, because married ladies, young or old (as we know), do not wear pockets, but dip their hands periodically into those of their husbands. Could she make a testamentary disposition of the savings of such income? Suppose I bequeath £1,000 to an infant spinster for her separate use, is it not clear that my executors could not safely pay it to her? Would coverture, supervening upon infancy, give her capacity to receive it?

2. Then as to your second instance, of my giving you sixpence (more probably a copper), to give to one of Lord Shaftesbury's boys, I submit that it proves nothing, because I am a free agent, and may, at my pleasure or caprice, scatter my guinea-fees on the pavement of Fleet-street (not, perhaps, justifiably, even in a legal point of view), or authorise another so to dispose of them. I may fling my purse down Carisbrook Well, (not, however, without committing a trespass), but my discretion (or rather my power of so abusing it) ends with me, for if I direct my executors to dispose of it after a similar

fashion, they, I apprehend (with great deference to certain opposite dicta advanced in the course of this discussion), would be accountable to my residuary legatee or next of kin—unless indeed, in a suit, to be instituted by or on behalf of the bottom of the well (apparently the party most deeply interested), the court would decree a specific performance of the direction. In the absence of a valid disposition, the law ordains a successor, and a valid disposition supposes a capable object or reasonable purpose.

3. Your next instance is that of a legacy to be given by executors to deserving poor, and of which they give five pounds to a distressed needle-woman just out of her teens. This you see is *charity*, and in no respect distinguishable on principle from the ordinary action of an hospital or dispensary.

4. If your next problem—that of your buying a pair of gloves in a shop of a boy aged fifteen and paying him 3s. 6d. (a monstrous price for a conveyancer)—is not to be solved by the *lex mercatoria*, it has an answer in the presumption that young doeskin is the authorised agent of some competent vendor; but as all presumptions are liable to be rebutted, it may happen that, unless you proceed with reasonable circumspection, you may find yourself, not only not "discharged" from the 3s. 6d., but overated with a heavier weight of metal. To the remaining query (as to the underdone lad who serves out railway tickets), a similar answer may, I think, be given.

C.—A man, a living man, may do what he pleases with his money, or other personal chattels, so only that he does not injure or annoy his neighbour. A father may give £20,000 to his infant daughter, whether married or unmarried, but I think he cannot make a settlement and direct that the income of the settled property shall be paid to an *infant* daughter, whether he (the settlor) shall be living or dead. A settlor cannot contravene the policy of the law. A man, during his life, may do anything he pleases with his money, however absurd, but this power ceases on his death. Every testamentary disposition is subject to the rules of law, and if I recollect right, Sir John Nichol set aside a will because it "sounded to folly." A bequest of money to be thrown down a well would be void, not merely on the ground of absurdity, but also, according to certain recent decisions (sound or unsound), because it infringed the rule against perpetuities! The right of a residuary legatee, or of the next of kin, is only to be defeated by a valid bequest, and if money be bequeathed to an infant, he or she cannot give a good discharge for the same. An infant may sell his time and labour and he is competent to receive the price. If an infant were to invent a useful machine, I think he might sell it, and a purchaser would be safe in paying the purchase money. To this extent an infant may contract, and may be considered to have the power of a person *suo jure*. A shopkeeper fills his shop with goods to be exchanged for money, and he may direct how the exchange is to be carried out, whether by a living hand or otherwise—it might be effected by machinery the price of the goods being marked thereon. In such a case an infant may clearly be the agent for carrying out the exchange on behalf of the shopkeeper. His competency is not involved; the law assumes that he only says and does what his master directs. Railway tickets may be delivered by machinery, and the money paid into a wooden hand. If executors have money to give in charity they may give to an infant, for it is to relieve his bodily wants,—assuming that the infant is of sufficient age to be able to expend the money for such a purpose. Executors, in such a case, would not be justified in giving £5 to a child of four or five years old.

[As we do not profess *tantas componere lites*, we leave this, not unimportant, problem to be solved on the reassembling, with renovated powers, of the grave body to whose love of curious inquiry it is attributed.]