

MIDDLETON, J.

MAY 25TH, 1912.

RE SMITH AND PATTERSON.

Will—Construction—Devise—Power to “Dispose of” Land in Interest of Family—Power to Sell and Pass Fee to Purchaser—Trust—Vendor and Purchaser—Objection to Title.

An application by the vendor, under the Vendors and Purchasers Act, to determine the validity of an objection taken by the purchaser to the vendor's title.

T. A. Gibson, for Smith, the vendor.

F. W. Carey, for Patterson, the purchaser.

MIDDLETON, J.:—The title of the vendor is derived through a will. The testator died on the 8th February, 1892, and devised all his property to his wife, “to be disposed of by her as she may deem just and prudent in the interest of my family.” The widow, assuming that this gave her a fee simple, purported to sell the property to the vendor's predecessor in title. The purchaser objects that the words quoted are not sufficient to give the widow a fee simple in the lands or any power to convey them in fee.

Upon the argument the purchaser placed his contention thus: The gift is a gift to the wife of the property “to be disposed of . . . in the interest of my family,” and this constitutes an express trust. If the gift had been to the widow in fee, and a power to dispose of the same in the interest of the family had been superadded, this would not reduce the fee.

The case is thus distinguished from most of the authorities dealing with precatory trusts; as, if the argument is well founded, this is an express trust.

After the most careful consideration, I do not think it necessary to deal exhaustively with this argument, because I am convinced that the words “to be disposed of” give the widow a right to sell. It may be that she held the proceeds of the sale in trust for the family, but this would not prevent the title passing by the sale.

The nearest approach to the precise words that I have been able to find is in *Countess of Bridgewater v. Duke of Bolton*, 6 Mod. 106, where, at p. 111, it is said: “A devise to a man ‘to dispose at will and pleasure’ is a fee, and this is ‘to dispose as he pleases.’ A devise was made of land to his wife ‘to dispose