

Eng. Rep.]

STEIN V. RITHERDON.

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Butler Rigby now showed cause. He cited *Watts v. Porter*, 3 E. & B. 743, 23 L. J. Q. B. 345; *Brandon on Attachment*, p. 50.

Atkinson, contra, was not called upon.

BOVILL, C.J.—The effect of the decision of the Lord Chancellor and the Lords Justices in *Beavan v. The Earl of Oxford*, 4 W. R. 113, 24 L. J. Ch. 311, is, that notice of an equitable assignment is not necessary. The defendant here is only a trustee for the assignee.

WILLES, J.—No notice was necessary. The decision of the Recorder no doubt proceeded on *Watts v. Porter*, but we agree with the Lord Chancellor and the Lords Justices. See also *Kinderley v. Jarvis*, 4 W. R. 579, 22 Beav. 1.

KEATING and SMITH, JJ., concurred.

Rule absolute.

[See *Pickering v. The Ilfracombe Railway Company*, 16 W. R. 458.]

CHANCERY.

STEIN V. RITHERDON.

Will—Construction—"Estate and effects"—Real estate.

The word "estate," in a will, is to be construed as passing both real and personal estate, even though the accompanying expressions are more applicable to personal estate only, unless the context absolutely negatives such construction.

Pogson v. Thomas, 6 Bing. N. C. 337, remarked on.

[V. C. M., Feb. 19, 1868,—16 W. R. 477.]

One of the points which arose in this case was, whether the words "estate and effects" in a will were sufficient to pass a freehold house belonging to the testator, Talbot Ritherdon. The material clause of the will, which was dated June 5, 1866, was the following:—

"I give and bequeath all my household furniture plate linen musical instruments books wine ready money goods and chattels unto my daughter Adelaide Ritherdon for her own use and disposal absolutely and as to all the *rest and residues of my estate and effects* I give and bequeath the same unto Charles Stein and William Sutton and the survivor of them their or his executors administrators or assigns (and who are hereinafter respectively designated as 'my trustees') upon trust with all convenient speed after my decease to collect get in and receive all debts or other moneys due and owing or otherwise payable to me at the time of my decease and to sell and convert into money any government stocks or shares in public or other companies of which I may die possessed and call in any moneys which at the time of my decease may be out on mortgage at interest or continue the said stocks and shares and mortgage moneys in these their present investments as to my trustees shall in their or his discretion seem most advantageous for the benefit of the said trust estates and upon trust as to all the capital moneys estate and premises which shall respectively come to the hands of my trustees or by virtue of my will to lay out and invest the same in the parliamentary stocks or public funds of Great Britain or at interest on real leaseholds or other security or securities (not being personal nor in Ireland) in their or his names or name with full power from time to time to alter vary transpose and change the same as in their or his discretion shall seem fit. And

I declare that my trustees shall stand and be possessed of the interest dividends and annual produce thereof and of such interest and dividends as may be due to me at the time of my decease upon trust, &c."

There was no clause in the will to pass a freehold house in Dover, of which the testator was possessed, unless it was held to pass under the above words.

The heiress at law of the testator contended that the freehold house descended to her, and did not pass by the will.

The trustees of the will filed a bill, praying among other things for a declaration whether the real estate of the testator was devised by the will to the trustees, or was undisposed of and descended to the heiress at law.

Pearson, Q. C., and *Buchanan*, for the plaintiff, cited *Saumarez v. Saumarez*, 4 M. and Cr. 331; *O'Toole v. Browne*, 3 Ell. & Bl. 572, 2 W. R. 430, to show that the words "estate and effects" include all that a testator has to dispose of: *Stokes v. Solomons*, 9 Hare, 75.

Glaspe Q. C., and *Begge*, for the defendant, heiress-at-law, cited *Pogson v. Thomas*, 3 Bing. N. C. 337; *Meads v. Wood*, 19 Beav. 215; *Doe d. Spearing v. Buckner*, 6 T. R. 610; *Coard v. Holderness*, 20 Beav. 147, 3 W. R. 311; *Molyneux v. Roe*, 8 D. M. G. 368, 4 W. R. 539, and argued that the general words "estate and effects" might well be qualified, as in this will, by reason of the trusts declared being applicable only to personal estate.

His Honour said there was no doubt the testator had not present to his mind when he made his will that in fact he was owner of any real property in fee simple. Still, as it is important that wills should be construed on broad general principles, the effect of general words such as *estate and effects* ought not to be cut down by the circumstance that accompanying expressions are applicable to personal estate only. No word could be more proper to pass all that a testator possesses than the word "estate," and though no doubt words of limitation ought to be carefully attended to, where the construction was in other respects doubtful, there was no such even balance of authority here as to require such minute criticism. All the authorities were in favour of including the real estate, except *Pogson v. Thomas* in the Common Pleas, and that case was only reported as a reference from the Master of the Rolls to the judges. And no grounds were given for the decision in the certificate. That case would not be probably followed at this time, and he should declare that the freehold house of the testator passed under the residuary bequest.

THE DIGEST OF THE LAW.—We understand that the Law Digest Commissioners have selected the three following gentlemen as the successful competitors in the preparation of Specimen Digests:—Mr. Henry Dunning Macleod for a specimen digest of the law of Bills of Exchange; Mr. William Richard Fisher for a specimen digest of the law of Mortgage, including Lien; and Mr. John Leybourn Goddard for a specimen digest of the law of 'Incorporeal Rights, including Rights of Way, Water, Light, and other Easements and Servitudes.' We believe that there were more than eighty competitors.—*Law Journal*.