

Prob. Case.]

IN RE GOODS OF SNIDER, DECEASED.

[Prob. Case.

of *Wood v. Dixie*, 7 Q. B. 892, which has been accepted as a leading case, both here and in England decides that the charge of the judge—that although the conveyance was *bona fide*—if there was an intention to defeat an execution creditor, the conveyance was void, was incorrect and going too far.

It does not make any difference since the jury found generally for the plaintiff, whether I directed them wrongly or not, as to the distribution. If the verdict had been for the defendants for any portion of property in question, then this question would have properly arisen.

With the respect to the objection to the affidavit, on the bill of sale. The objection is to the jurat and that it should have stated that the vendees were severally sworn. In the absence of any case upon this point, I am not prepared to pronounce the instrument void, on that account; and, even if it was, there is evidence I think of change of possession sufficient to meet the requirements of the law.

With respect to the objection that the verdict is contrary to law and evidence, and perverse, and against the weight of evidence, I must confess I have had great difficulty in coming to a conclusion, but on the whole, when I recollect that the plaintiffs paid full value for the goods—that the transfer was not only for the consideration of debt, already accrued, but for money advanced at the time of the execution of the bill of sale, I am not prepared to say that the jury was wrong in coming to the conclusion, that the transfer was not made with the intention of defeating or delaying the defendants, or giving a preference to the plaintiffs or other creditors.

I discharge the rule.

PROBATE.

IN RE GOODS OF SNIDER, DECEASED.

(In the Surrogate Court for the County of Hastings.)

Deed—Testamentary paper—Will revocable—Cancellation of administration—Probate.

One S. died in 1867, leaving his next of kin, who, believing that S. died intestate, obtained administration. G. afterwards found an agreement and will under seal of S. in the same paper in the possession of F. the only witness to its execution. By this paper S. agreed to convey part of a lot of land to G. on certain conditions. S. owned at the date of the paper, the other half of the same lot, and also some personalty. By this paper, in case the conditions were performed, S. devised *all his real and personal estate* to G. and his heirs. Some years after the date of the paper, S. conveyed the other half of the lot to G. the devisee and took a mortgage for the balance of the unpaid purchase money.

Held, that this paper was a will and not a deed and therefore not revocable, but although the subsequent conveyance to G. and reconveyance by way of mortgage to S. might have the effect of revoking *pro tanto* the will relating to the realty—yet it had not the effect of revoking it as to the personalty.

Held, also, that it was a good will of the personalty, notwithstanding it devised real estate and only one witness of its execution.

Held, also, that the letters of administration must be brought in and cancelled, and the paper admitted to probate.

SHERWOOD, Co. J.—The petitioner David Glover asks to have the letters of administration of the estate of Snider granted to James Cole, on the 11th February, 1868, revoked, on the ground that the said Snider made a will in his favor dated 1st March, 1860. He files a writing of that date made by Snider in the presence of

one James Farmer, who was called and proved its execution. He states that petitioner and Snider came to him and stated an agreement that they had entered into between them, and that Snider afterwards came to him to have it reduced to writing, which he did, and after it was read over to him, Snider signed it. The writing sets forth a sale of one half the lot Snider was then living on to the petitioner, his wife's brother, for the sum of eight hundred dollars, to be paid at such time as Snider might want it, to enable him to pay his lawful debts. It states a further agreement, that petitioner was to come and live in Sniders house, and to work his land with such help as Snider might be willing to afford him. That petitioner was to dispose of anything that the farm might produce, to pay debts, and if there should be anything left after paying up all debts, (I understand it Sniders debts), petitioner was to give Snider one half. Snider further agreed not to sell or let his part of the land to any person without petitioners consent, and he further agreed, after his death whatever property he might be the owner of, either real estate or otherwise, he did bequeath to the petitioner, his heirs and assigns for ever; with this provision, that in case his wife Maude, should live longer than himself that petitioner should support her as long as she might live. He further agreed to leave the agreement with James Farmer the witness to keep for him, and that he was not to give it up unless petitioner and he should require him to do so, and also, that if petitioner should fulfil the conditions of this agreement, and that they should not call on Farmer to give up the agreement, then that the written agreement should be his last will and testament, and whatever property he might be the owner of at his death, either real or personal, he gave to the petitioner, his heirs and assigns forever. Evidence was given by the petitioner of payment of debts, by him due by Snider, and there was no evidence that Snider ever asked for the agreement, that Mrs. Snider died before Snider. On the part of the administrator it was shown that Snider had conveyed the lot (mentioned in the writing as sold to the petitioner), and had taken a mortgage for a part of the purchase money; and that he afterwards sold the rest of his land to the petitioner, taking back a mortgage for the unpaid purchase money, that Snider lived with petitioner until his wife's death, when he went to live with Cole the administrator, with whom he lived until his own death. Declarations of Snider to the effect that petitioner was to have all the property at his death made by him at different times were given in evidence to shew, that he never intended to revoke his will if it be one. On the other side it was given in evidence, that about the time of the funeral the petitioner expressed himself as having no claim on Sniders estate, and that he knew of no will. And Cole (who was examined by consent of both parties), stated, that Snider had promised to leave to him his property, and if he left him to pay him at the rate of \$3 per week for his board. It was stated that Snider told him he left petitioner because he was lonely after his wife's death and that Glovers children annoyed him.

The question is, can the writing put in evidence, or any part of it, be considered a will? If so,