

Err. & App.]

IN RE GOODHUE, ETC.

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termed its paramount authority, has arbitrarily, by the Act alluded to (34 Vic. chap. 99), transferred to the testator's children the whole of the testator's residuary estate, although he had not by his will devised it to them, and has deprived the testator's grandchildren of their hopes of partaking in the testator's bounty, by stripping them of all possibility of enjoying estates which, in a given event which may yet happen, the testator had devised to them.

Conceding that the Legislature has the power to commit such a palpable injustice, I cannot be persuaded that the Act in question has done so, unless I find such an intent plainly and unequivocally stated, in language so express as to admit of no possible misconception, and no shadow of a doubt.

It is always to be presumed that the Legislature, when it entertains an intention, will express it in clear and explicit terms: *Gas Co. v. Clarke*, 11 C.B., N.S. 827. When an Act of Parliament interferes with, or when the contention is that it interferes with, private rights and private interests, it ought to receive a most strict construction in so far as those rights and interests are concerned; and so clearly is this the established doctrine of the Court, that Lord Justice Sir G. Turner, in *Hughes v. Chester and Holyhead Railway Company*, 8 Jur. N.S. 221, said that it was unnecessary to refer to any cases upon the point, and that they might be cited almost without end.

In *Eton College v. Bishop of Winchester*, Loft., 401, it is said, that the construction of a Private Act is to be governed by the principles of common law, and applied to the subject in a manner analogously to the rules of interpretation of a private deed or conveyance. The Court knows nothing of the intention of an Act, except from the words in which it is expressed.

In *Edinburgh and Glasgow Railway Company v. the Magistrates of Linlithgow*, 3 Macqueen, H. of L. 704, Lord Truro C.J., says, that a recital, even in an Act of Parliament, will not bind those who are not within its enacting part. And our own interpretation Act, Ontario Statute, 31 Vict., ch. 1, sec. 31, enacts that if an Act of the Legislature of Ontario be of the nature of a private Act, it shall not affect the rights of any persons, such only excepted as are therein mentioned and referred to.

The whole frame of the deed which the Act confirms is based upon the assumption that the estate of the testator's children, living at his death, in the testator's residuary real and personal estate, is a vested estate, and that the period of distribution only is postponed until the decease of testator's widow.

The deed recites, among other things, as the occasion of the provisions of the deed, as follows:—"And whereas all the said testator's children have attained the full age of 21 years; and whereas (after paying and providing for all out-goings) the residuary estate is of large value, amounting to more than \$300,000, and the respective shares of the testator's said children therein are considerable, and it is desirable that they should respectively enter into the possession and enjoyment of the same, and that this should not be postponed until the decease of the said widow of the deceased; and whereas the several parties

hereto have respectively assented and agreed to enter into and execute these presents, in order to secure to each of the children of the testator the immediate possession and enjoyment of their respective shares in the said residuary estate." The deed, for the reasons here recited, then proceeds to declare, among other things as follows:

"Now these presents therefore witness, and it is hereby respectively covenanted and agreed upon, by and between the said respective parties and their respective heirs, executors and administrators, as follows:—"Fifth—"That the residue of the said trust estate, other than is hereinbefore excepted, shall be divided into six separate shares or allotments of equal value, or as nearly so as circumstances will permit, and such division into the said allotments shall be made as soon as conveniently may be by the said trustees; and in making such allotments, the trustees shall distribute the said trust estate *in specie*, as the same may then happen to be, and without converting or collecting, or assuming to convert or collect the same or any part of the said trust premises, and without making any equal partition of the said trust estate which consists of realty, but treating and considering the whole of the said residuary estate to be allotted as converted into personality, and of the money value ascribed by the said trustees to each part and parcel thereof; and that in case the said trustees shall neglect or refuse to make such allotment or distribution, or in case they should differ about the same, or in case of the death or removal from this Province, or the resignation of either of them the said trustees, in any of such cases any of the parties to these presents, other than the party of the first part, (that is the widow), may apply to the Court of Chancery or a Judge thereof, in a summary manner, to appoint one or more referee or referees, by whom such allotment may be validly made; and that in case of any difference as to which of the said several allotments shall be taken by any of the said children, for his or her shares respectively, the same shall be determined by lot or drawings by the said trustees, or referee or referees, in the presence of at least three of the said children.

6th. "When the said several allotments shall have been determined, and the respective shares distributed or assigned to each of the said children then the said respective shares to which the children are before said to be beneficially entitled in common, shall be duly conveyed and transferred according to the several natures of the respective parts of such shares, unto and to the use of each of the said children, their respective heirs, executors, administrators and assigns absolutely *in severalty*."

Now, throughout the whole of this deed there is not a word to indicate that there was any doubt entertained as to the vested estate of the testator's children, living at his death, in the residuary trust estate; true, the will is recited, whereby it appears that the trusts of the will are "for all the testator's children who should be living at the decease of the testator's wife, in equal shares, and the children of such of them as might then be dead, such grandchild or grandchildren to be entitled to the share his, her or their father or mother would have been entitled to if living;" but the deed treats this