

U. S. Rep.]

MARY ANN BACON'S ESTATE.—GENERAL CORRESPONDENCE.

ment to enable the cestui que use to acquire the legal estate, it has been understood that a conveyance is unnecessary. At most it can be but a matter of form, rather than of substance. In fact such conveyances have not usually been made. Until the year 1836 we had no court of equity to compel a trustee to convey, and therefore that was considered as having been done which the trustee should have done, and with the same effect. The cestui que trust being entitled to the whole beneficial enjoyment, and the trustee having no right to interfere with it, no reason was apparent why a legal title should be held continuing in the latter. A severance of the legal right from the beneficial ownership is not to be maintained without some reason. In the case before us the purpose of the trust was accomplished when Mrs. Bacon died. The testator did not intend that the trustees should hold any estate after her death. He contemplated its immediate transmission to the remaindermen, a transmission by conveyance indeed, but no holding in trust for those in remainder. There was, therefore, nothing substantial to be secured by treating the legal estate as remaining in the trustees, and only an equitable interest in Mrs. Bacon's heirs. It is true that we have in some cases decreed conveyances from a trustee to a cestui que trust, when the purpose of a trust has been fulfilled, but this is not because the legal and equitable title remained apart. It was to dissipate a useless cloud upon the title, and make the property more marketable. We have done this when the trust had expired by limitation, and when without doubt the legal estate had passed from the trustee, though it had been given to him formally in fee simple. It is no more remarkable that a devise to trustees to convey to another should pass the legal title to that other, than a devise to trustees and their heirs for a temporary purpose vests in the trustees the legal estate only until the purpose is accomplished. In both cases the legal title remains severed from the beneficial ownerships so long only as there is any useful purpose or substantial reason for maintaining a separation. Accordingly it has been held that a direction to not continue the legal estate in them, and convey after the termination of a trust, does make them trustees of the persons to whom they are directed to convey. This was noted in *Nice's Appeal*, 14 Wright, 143, where the question was distinctly raised in the argument and, it was assumed in *Barnett's Appeal*, 10 Wright, 392. The decision accords with what, it is believed, has always been considered the law in this State.

Holding then, as we do, that by the limitations of the testators will the right heirs of Mrs. Bacon took a legal estate at her death, there was no union of their estate with hers, and consequently nothing passed by her will.

Thus far we have considered only the directions of the testator respecting his real estate. The same rule is applicable to the personalty. By his second codicil the testator revoked so much of his will as gave to either of his daughters directly any part of his personal estate, and in lieu thereof gave it in trust for the sole and separate use of the daughters, in certain proportions; the income to be received and

paid over by the trustees, in the same manner as the income of his real estate during their natural lives respectively, and in case of the decease of any of his daughters, leaving a husband surviving, the income to be received and enjoyed by the husband during his life, and from and after the decease of his daughters and their husbands respectively the share of each daughter to go to her right heirs forever. The disposition is very similar to that made of the realty, and if that did not confer a fee upon Mrs. Bacon in the land, it is not easy to see how, under the second codicil, she took an absolute interest in the personalty. The rule in *Shelley's case* has nothing to do with the question. It is true the principle is well established that where personal estate is bequeathed in language which, if applied to real estate, would create an estate tail or a fee simple, it vests absolutely in the person who would be the devisee in tail or in fee. And this rule applies to cases which come within the rule in *Shelley's case*. But the words of Mr. Warder's will, we have seen, would not have given Mrs. Bacon a fee, had the subject of the gift been realty. Besides, the principal stated is not entirely without exception. A very important one is asserted in *Knight v. Ellis*, 2 Brown Cha. 570; *Ex parte Wynch*, 5 De Gex, McNaughton & Gordon, 129; and in *Emma Myer's Appeal*, 13 Wright, 111. These cases relate, indeed, to verbal construction of wills relative to personalty, but they show that courts are more anxious to support limitations of personal estate than they are of realty. The same thing is shown by the greater readiness with which words importing a failure of issue, and introducing a second limitation are construed to refer to a definite failure, when applied to devises of realty. It is enough for this case, however, that the second codicil of the will would have given only a life estate to Mrs. Bacon, had the subject of the gift been land. The decree of the court below was therefore right.

Decree affirmed.

GENERAL CORRESPONDENCE.

Attorney's Act.

TO THE EDITORS OF THE CANADA LAW JOURNAL.

MR. EDITOR,—By Mr. Blake's Bill passed last session in respect of attorney's at law, two additional examinations have been added; but all students who at the date of the passing of the Act are within four years of the expiration of their term are exempt from the first examination.

My Articles are dated the 4th of March, 1867, and the date of the Bill is the 4th of March, 1868. Am I exempt from the first examination or not?

By kindly inserting the above in your journal you will much oblige

Yours truly,

STUDENT.