

[Eng. Rep.]

LAMBE V. EAMES.

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wife was to be anything else but his successor in every respect, the head of the family just as he himself had been. Suppose the gift, instead of being to the testator's wife, had been to his three sons, the share of each son to be at his disposal as he should think best for the benefit of himself and his family. In such a case the words would clearly have meant that the testator had not the vanity to think that he himself could deal with his property better than his successors could. And the case appeared equally strong when the gift was made to the widow, who would be the natural successor of the testator with respect to his family. It was, however, said that the question was governed by authority. But the cases cited were in many ways distinguishable from the present case. First of all, there was here an absolute gift to the widow, which must be cut down in some way. It was argued that the difficulty in the way of saying that there was a trust because, before you could say there was a trust the property to be affected must be ascertained, and the nature of the trust defined, existed in the decided cases, and yet the Courts in those cases said that there was some interest in the children, as for instance in *Crockett v. Crockett* though they did not decide what that interest was, and it was urged that the Court might now say that there was an obligation to do something for the children, and that the plaintiff, who was illegitimate, could not be allowed to take anything. But even if there was in this case such an obligation it was impossible to extend it to more than the providing maintenance for the children. It was impossible to say that the words could be construed to mean a trust for the widow for life with remainder after her death to the children, either all of them, or one or more exclusively of the others, in such proportions as the widow might appoint. But if the trust was not that, what was it? Mr. Bristowe said that whatever she did not spend during her lifetime was to be in some way for the benefit of the family. His Lordship did not see how to derive such a meaning as that from the will in the present case. In *Crockett v. Crockett* it was only decided that the children took some interest in the property, and if the widow had in this case honestly satisfied such an obligation his Lordship did not see how more could be required of her. Then it was said that the case of *Godfrey v. Godfrey* was like the present. But there the present Lord-Chancellor, then Vice-Chancellor, did not define what the interest of the children was. He began his judgment by saying that there was clearly a trust; that was the *ratio decidendi* there. It was impossible in the present case to say that there was a trust. In *Godfrey v. Godfrey* the Vice-Chancellor went on to say—"Where there were strong expressions indicating an intention that the devisee or legatee should hold the property free from control, the words denoting a wish, request or recommendation were considered to be controlled, and it was held that no trust was created; but there was no such indication here. The only difficulty arose from the words 'as to her seemeth best;' but it was not necessary to determine now to what extent the children were interested. It might be that those words were merely a direction as to the control and manage-

ment of the property." Therefore that case differed from this unless it could be said that the words used in this will "to be at her disposal in any way she may think best for the benefit of herself and family," implied simply a reasonable discretion in the widow as to the control and management of the property. That, however, would be quite inconsistent with the words of the testator, for it was clear that he intended that she might employ the property and risk it all in the trade. Those were the principal cases relied upon; the other cases cited were only illustrations of the rule; and his Lordship thought that they did not enable the Court to escape from the difficulty which resulted from the indefiniteness of the word "family" in a case where there was given to the woman a general power to do what she pleased with the property. It seemed to his Lordship impossible here to put a restricted meaning upon the word "family;" it might include sons, daughters, sons-in-law, daughters-in-law. The property too, which was to be subject to the supposed trust, was equally indefinite, for it could not be said how much the widow was at liberty to spend in her lifetime. His Lordship was, therefore, of opinion that there was no such trust as the Court could enforce. If there were any obligation at all, he was of opinion that it had been fully satisfied by the widow when she made the will, giving part of the property to one member of her family, and part of it to an illegitimate child of another member of the family whom she might honestly think came within the words of her husband's will. The decision of the Vice-Chancellor was therefore right, and the appeal must be dismissed.

MELLISH, L. J., was of the same opinion. In order to reverse the decision of the Vice-Chancellor, the Court must see that the widow exceeded the authority given to her by the testator. The Court must see what the words used by the testator really meant, and must not be influenced by a desire to find a trust in them, but must see what was the fair construction of the words. And the Court was also entitled to look at the state of his circumstances at the time when he made his will. The will began with an absolute devise to his wife. [His Lordship read the words of the gift.] In the first place, what was the meaning of the property being not, at the disposal of the widow, but "at her will and disposal?" It was clear to his Lordship's mind that the testator meant her to have the power of disposing of the *corpus* of the property as she pleased for the benefit of the family. If unfettered by any decision, his Lordship would have been disposed to hold that the words "to be at her disposal in any way she may think best for the benefit of herself and family," were merely intended to express the testator's object or motive in making the devise to his wife. He had such confidence in her, and he knew that the very best way of disposing of his property might be to commit its distribution to a sensible person. This might be very preferable to creating a trust which might possibly lead to a Chancery suit. His Lordship agreed with his learned brother that it would be a cruel thing to put such a construction upon the words as might entirely defeat the intention of the testator. But to a certain