

THE HON. CHANCELLOR BOYD.

MARCH 17TH, 1913.

## JOHNSON v. FARNEY.

4 O. W. N. 969.

*Will—Construction—Precatory Trust—Mere Expression of Desire Does not Create—Absolute Interest not Cut Down—Review of Cases.*

A testator by his will left all his real and personal property to his wife, and a later clause of the will read "I also wish if you die soon after me that you will leave all you are possessed of to my people and your people equally divided, that is to say your mother and my mother's families."

BOYD, C., *held*, that the latter clause did not impose a trust and that the widow took absolutely.

*Re Hamilton*, [1895] 1 Ch. 375; [1895] 2 Ch. 370, followed.

Action for a declaration that the document propounded as the last will and testament of the late Anna Maria Johnson, was not such in fact, upon the ground that she was, when she executed it, incompetent to make a will; and, in the alternative, for construction of her late husband's will, and a declaration as to the estate taken by her under her husband's will.

J. H. Rodd, for the plaintiff.

F. A. Hough, for the defendant.

HON. CHANCELLOR BOYD:—At the close of the evidence I held that the will of the testatrix was well made, and that the probate of it granted could not be disturbed. Failing the direct attack, the plaintiff next contended that as to the property coming from her husband, the testatrix had no more than a life estate, or a life estate coupled with a trust for the ultimate benefit of the plaintiff and others. This involves the proper construction of the husband's will upon which I withheld judgment till I had examined the cases cited.

The material clauses of the will are these:—

At the introduction it is said "I leave all my real and personal property to my dear wife." Then towards the end it is said "I also wish if you die soon after me, that you will leave all you are possessed of, to my people, and your people, equally divided—that is to say your mother and my mother's families." Then in a codicil he refers to real estate purchased after the date of the will, and says "Property known as the Wm. McGuire property to go to my wife to do as she see fit with it. If she, my wife, die intestate