

SPRINGETT v. JENINGS.

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Feb. 28.

Will—Residuary Devise—Wills Act (1 Vict. c. 26), s. 25—Gift of “the rest of my Lands in H.”

A testatrix gave certain lands in the parish of *H.* to *A.*, *B.*, and *C.*, as joint tenants in fee, and devised to the Plaintiff “the rest of my freehold hereditaments in the parish of *H.*, and all my freehold hereditaments in the parishes of,” &c. The devise to *A.*, *B.*, and *C.*, having been declared void, as made on a secret trust for a charity:—

Held (affirming the decision of the Master of the Rolls), that the lands comprised in that devise did not pass under the gift of “the rest of my freehold hereditaments in the parish of *H.*,” but were undisposed of.

THIS was an appeal by the Plaintiff from part of a decree of the Master of the Rolls.

The testatrix, *Eliza Springett*, by will, dated the 21st of February, 1866, declared her will to be, that in case she should not in her lifetime have well and effectually disposed of certain property in the parish of *Hawkhurst*, of which she gave a particular description, the property should go, and she thereby devised the same to *Jesse Piper*, *Jesse Piper* the younger, and *Edward Piper*, their heirs and assigns, as joint tenants. She then proceeded: “I devise the rest of my freehold hereditaments situate in the parish of *Hawkhurst* aforesaid, and all my freehold hereditaments situate in the parishes of *Ticehurst*, *Salehurst*, *Pevensey*, and *Westham*, all in the county of *Sussex*, to *Thomas Brook Springett*, of *Hawkhurst* aforesaid, Esq., in fee simple.”

This bill was filed by Mr. *Springett* to set aside the above devise to the *Pipers*, on the ground of its having been made on a secret trust for a charity. The Master of the Rolls held that the devise was void, and that the property was undisposed of (1). The Plaintiff appealed, alleging that it passed under the gift of the rest of the testatrix’s lands in *Hawkhurst*.

Mr. *Joshua Williams*, Q.C., Mr. *Southgate*, Q.C., and Mr. *G. W. Collins*, for the Appellant:—

The scope of the *Wills Act* evidently was to assimilate the law

(1) Law Rep. 10 Eq. 488.

L. JJ. as regarded devises of real estate to that as to personalty: *Carter v. Haswell* (1). The enactment in sect. 25 precisely expresses what the law was before as to personalty: *Jarman* on Wills (2); *Oke v. Heath* (3); *Falkner v. Butler* (4). To ascertain whether a devise is a residuary devise within the meaning of the section, you must ascertain whether it has the properties of a residuary devise. Now, a reversion in fee in lands in the parish of *Hawkhurst* would have passed under this gift: *Wheeler v. Waldron* (5). The word "rest" is a proper introduction to a residuary gift: *Lydcott v. Willows* (6). After-acquired land in *Hawkhurst* would have passed under this gift: *Doe v. Walker* (7); *Goodlad v. Burnett* (8); *Culsha v. Cheese* (9). The restriction as to locality cannot take away from the gift the character of a residuary gift. Suppose a testator gave an estate in *England* to *A.*, and the rest of his lands in *England* to *B.*, an Irish estate to *C.*, and the rest of his lands in *Ireland* to *D.*, surely the gifts to *B.* and *D.* are both residuary. The 25th section carries out the idea of sect. 24. Take the will as speaking from the death, and the gift includes the lands expressed to be devised to the *Pipers*, for the devise to them was void. The Court will not readily hold what is previously ineffectually given to be excepted from the residue: *Bernard v. Minshull* (10); *Green v. Dunn* (11); *Cogswell v. Armstrong* (12); *Evans v. Jones* (13). Even before the *Wills Act*, these lands would have passed under this gift: *Doe v. Sheffield* (14); *Smith v. Lomas* (15); *Hawkins' Construction of Wills* (16). The 25th section contains nothing to restrict it to a general residuary devise. There may be particular residues. *De Trafford v. Tempest* (17) is strongly in our favour; so is *Green v. Dunn*. There cannot be any distinction between "rest" and "rest and residue." *Attree v. Attree* (18) is for us.

(1) 3 Jur. (N.S.) 788.

(2) 3rd Ed. vol. i. p. 729.

(3) 1 Ves. Sen. 135.

(4) Amb. 513.

(5) Allen, 28.

(6) 3 Mod. 229.

(7) 12 M. & W. 591.

(8) 1 K. & J. 341.

(9) 7 Hare, 236.

(10) Joh. 276.

(11) 20 Beav. 6.

(12) 2 K. & J. 227.

(13) 2 Coll. 516.

(14) 13 East, 526.

(15) 12 W. R. 949.

(16) Page 45.

(17) 21 Beav. 564.

(18) Law Rep. 11 Eq. 280.

Mr. *Jessel*, Q.C., and Mr. *Hume*, for the co-heiresses, were not called upon.

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SIR W. M. JAMES, L.J.:—

We are of opinion that the decision of the Master of the Rolls ought to be affirmed.

The question is, whether the gift contained in this will of what has been called a particular residue of lands in a particular parish amounts to a residuary devise within the meaning of sect. 25 of the *Wills Act*. The words are: "I devise the rest of my freehold hereditaments situate in the parish of *Hawkhurst*," &c. There is no doubt that the word "rest" may, in certain cases, have the character of what is called a residuary devise either general or particular, but that must be upon the construction of the particular instrument. In the case last cited the testator, in substance, said: "I give a portion of my property to *A.*, and I give the rest to *B.*;" that means the rest of all he had in the world, and the gift was a general residuary devise. But it seems to me impossible to apply that construction where what is given is the residue or the "rest" of property in a particular place, of some property out of which there was a previous gift.

I asked, in the course of the argument, what would be said in such a case as this: A man says, "I give all my £3 per Cents. to *A.*, and all the rest of my Government stock to *B.*," and the gift of the £3 per Cents. to *A.* fails by lapse. Will they go to *B.*? It appears to me the answer must be in the negative, for it is quite clear that the rest of the Government stock there was not a residuary bequest which could take in the particular thing which was given by a separate description to somebody else. The other illustration I gave was this: "I give all my *London and South Western* stock to *A.*, and I give all the rest of my railway stock, or all other my railway stock (which would seem to be the same) to *B.*" The failure of the first gift would not be for the benefit of the person to whom the other stocks are given. So it appears to me that, in the present case, the gift of the rest of the lands in *Hawkhurst* has not the effect of a residuary devise. It is as if the testator had given certain lands in *Hawkhurst* to *A.*, and then given by name certain other lands there (which happened to be all the others he had) to *B.*

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It is said, and no doubt with great force, that we are to construe gifts of land under the new law with reference to and by way of assimilation to gifts of personalty. Now if there were a gift of personalty in such a way as to amount to what is called a gift of a particular residue, as in those cases which have been referred to, where there was a gift of certain furniture to the widow, and a gift of the furniture "not hereinbefore disposed of" to his son, I take it it would be impossible to doubt that still what the son takes is given to him as a specific legatee, and that he does not take as residuary legatee; therefore it appears to me that what the Plaintiff takes under the gift in the present will he takes, not as a residuary devise, but as a specific devise, and I think it impossible to bring the gift within the words of the Act of Parliament, "the residuary devise (if any) contained in such will."

The case, moreover, appears to me to be covered by authority, for I cannot distinguish it in principle from *In re Brown's Trusts* (1), where the present Lord Chancellor, when Vice-Chancellor *Wood*, uses words which are entirely applicable to this case: "Suppose she had given a part of this estate in fee to a devisee who afterwards died in her lifetime, and by a subsequent codicil she had devised all that part of the estate which was not before given, that would be as plain a specific devise as possible; and I think I should be stretching the statute prodigiously if I were to hold that the devise in question in this case is a residuary devise." I am of the same opinion in this case. We should be stretching the statute prodigiously if we were to hold that a gift of the rest of the lands in a particular parish was a residuary devise within its meaning.

SIR G. MELLISH, L.J.:—

I am of the same opinion.

It appears to me there are two questions in this case; first, whether, from the language of the testator, you can infer an intention that if the previous devise did not take effect on account of the secret trust, or from any other reason, these lands should pass to the Appellant. I am of opinion that no such intention can be naturally inferred. First of all there is a specific devise of these

(1) 1 K. & J. 522, 528.

lands to the *Pipers*, not expressing any trust, but, as has been found, on a secret trust for charitable purposes. Then the testatrix devises to the Appellant "the rest of my freehold hereditaments situated in the parish of *Hawkhurst*." Now, as a matter of construction, it is impossible to infer from those words that she had any intention to pass to the Appellant these particular lands which she had before devised to the *Pipers*. This appears to me to distinguish the case from those which have been cited respecting what is called a particular residue of personal property, for every one of those cases appears to me to have gone upon this, that from the language of the testator it was to be inferred that he intended the particular property, if the gift of it failed, to pass under the bequest of the particular residue of that description of property.

Now in the case which I think was the one most relied upon, perhaps, by Mr. *Williams*, *De Trafford v. Tempest* (1), the testator gave to his widow certain chattels which at the time of his decease might happen to be at, or in, or about his capital mansion, messuage, and dwelling-house at *Trafford Park*. He subsequently bequeathed to his son, Sir *Humphrey Trafford*, all his household and other furniture, plate and chattels, not thereinbefore otherwise disposed of (except money and securities for money), which at the time of his decease might happen to be at, in, or about his said capital messuage, or dwelling-house at *Trafford Park*. Those were very strong words, from which it can be easily inferred that he did intend that if the previous devise to his widow from any cause, such as her dying in his lifetime, did not take effect, all his chattels in that house should go to his son. The words themselves, "not hereinbefore otherwise disposed of," express that if the particular chattels did not go to his widow, he meant them to go to his son. So in *Petre v. Petre* (2), where a testator, having a power of appointment by will over a sum of stock, bequeathed two sums of £5000 and £500 sterling thereout to *A.* and *H.*; then gave to trustees all and singular the rest, residue and remainder of the said estate, trust moneys, property, and premises so as aforesaid settled and assigned by him under and by virtue of the said before-recited indenture of assignment, after deducting from the whole of the said estate, trust moneys, property, and premises the said sum

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(1) 21 Beav. 564.

(2) 14 Beav. 197.

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of £5000 and the said legacy of £500, upon trust to invest the same for the benefit of his son. The decision simply was, that there not having been enough to satisfy the £5000 and the £500 in full, the gift of the residue failed. It was so held because that is the true construction of the language. The testator gave £5000 and £500 out of the trust funds, and all the rest and residue of them he gave to somebody else. Then it was justly said, if there is no rest and residue, if the £5000 and £500 cannot be paid, then the donee of the rest and residue gets nothing. The case turned upon the question what the testator meant by his words. If a testator uses language from which you can infer his intention to be that if a gift of certain property fails, that property shall pass under a gift of the residue of his property in a particular parish, I do not at all mean to say that it would not so pass. The next question is, whether the lands passed to the Appellant under the 25th section of the *Wills Act*. Now, in order that a residuary gift may, under the 25th section of the *Wills Act*, include lapsed and void devises, without the will expressing any intention to that effect, I am of opinion that the devise must be a real residuary devise; that is to say, so worded as to apply to all land that is not otherwise disposed of. When a testator has made a gift of that kind, then the Act, in substance, says it will be presumed from the universality of the gift that, unless he expresses the contrary, he intends it to pass what was specifically devised, if from any cause the specific devise fails; and I must say that the section appears to me to assume that there can be only one residuary devise in the will, for it says, "shall be included in the residuary devise (if any) contained in such will." That appears to me to shew that the Legislature intended the section to apply only where there was what may be called an universal residuary devise; that is to say, a devise of all the residue of the testator's lands.

Solicitors: Messrs. *Monckton & Monckton*; Messrs. *Dawes & Sons*.