

STIRLING, J. shares in another company held by the Defendant company.

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 WOOD  
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 ODESSA  
 WATERWORKS  
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With those considerations, however, I have nothing to do. They might properly have been weighed by the framers of the articles of association: they may possibly be fit to be submitted to the shareholders of this company, if and when they are invited to consider the propriety of altering the regulations of the company under sect. 50 of the *Companies Act*, 1862. What I have to determine is, whether that which is proposed to be done is in accordance with the articles of association as they stand, and, in my judgment, it is not, and therefore the Plaintiff is entitled to an injunction so far as relates to the payment of dividends until the hearing of the action, or further order, and the costs of the motion will be costs in the action.

Solicitors: *Turner & Hacon; Slaughter & May.*

T. F. M.

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June 20, 22;
Aug. 7.
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In re WELLS' TRUSTS.
 HARDISTY *v.* WELLS.

[1888 W. 3546.]

Appointment—Revocation—Special Power—Appointment by Will—Subsequent inconsistent Appointment by Deed with Power of Revocation—Will speaking from Death—Effect of Will—"Contrary Intention"—General and particular Intention—Election—Wills Act (1 Vict. c. 26), ss. 19, 23, 24, 27 [Revised Ed. Statutes, vol. viii. pp. 34, 35].

By a settlement made in 1842 on the marriage of a female infant, the husband and wife covenanted that as soon as the wife attained twenty-one certain real estate to which she was entitled as tenant in tail, and certain personal property belonging to her, should be conveyed and assigned to trustees upon trust after the death of the wife for the children of the marriage as the husband and wife by deed, or the survivor of them by deed with or without power of revocation and new appointment, or by will, should appoint, and in default of appointment in trust for the children of the marriage in equal shares—and by the same settlement the husband assigned a policy of assurance upon his own life to the trustees upon the same trusts.

The joint power of appointment was never exercised, and the wife died in 1857, without having executed any disentailing assurance of the real estate. Her eldest son entered into possession of the real estate as tenant in tail. In 1864, the husband, by deed reciting that the eldest son was

the heir in tail of his mother, appointed all the trust funds comprised in the settlement, other than the real estate, to the four younger children, and reserved to himself a power of revocation and new appointment by deed or will. The trustees then divided the trust funds, with the exception of the moneys secured by the policy, between the four younger children.

In 1869 the husband by will, in express exercise of the power contained in the marriage settlement, appointed specific sums of money to the eldest son and three of the younger children, and appointed the residue of the settlement funds to the eldest son.

In 1878, by deed, reciting the deed of 1864, the division amongst the four younger children, and that the moneys secured by the policy were the only fund remaining subject to the trusts of the settlement, the husband, in exercise of the power reserved by the deed of 1864, revoked the appointment thereby made, and appointed the policy moneys in equal fifths between his eldest son, his three surviving younger children, and the three children of a deceased younger child, and again reserved to himself a power of revocation.

In 1883 the husband by deed made the appointment of 1878 in favour of his eldest son, irrevocable, and in 1888 the husband died.

Upon a summons to obtain the opinion of the Court as to who were the persons entitled under the settlement:—

Held, first, that the date of the husband's will being before that of the deed of 1878 there was sufficient evidence of "a contrary intention" within sect. 24 of the *Wills Act*, and consequently that the will did not speak from the death of the testator so as to revoke the appointment by that deed:—

Held, secondly, that as the deed of 1878, although removing four-fifths of the fund from the operation of the will, did not purport to revoke it, the will under sect. 19 of the *Wills Act* remained in force, and operated as to the one-fifth ineffectually appointed by the deed of 1878 to the grandchildren of the testator:—

Held, thirdly, that, having regard to the intention shewn by the appointor in the deed of 1878, the eldest son was not bound to elect between the real estate which devolved on him as tenant in tail, and the interest appointed to him by that deed; but that he was bound to elect between such real estate and the benefits derived by him under the will, inasmuch as the will took effect by the operation of law and independently of the intention of the testator.

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ADJOURNED SUMMONS.

This was a summons by the executors of the last surviving trustee of an indenture of settlement, dated the 31st of January, 1842, and made upon the marriage of Rev. *Francis Ballard Wells* and *Jane Rose Fanny* his wife, to obtain the opinion of the Court as to who were the persons entitled to the funds remaining subject to the trusts of the settlement and in what shares and proportions.

STIRLING, J. At the date of the settlement, Mrs. *Wells* (then *Jane Rose Fanny Hardisty*) was an infant; and by the deed of settlement Mr. *Wells*, as to his own acts and deeds and those of persons claiming under him, and Mrs. *Wells* as to her own acts and deeds and those of persons claiming under her, covenanted that as soon as conveniently might be after Mrs. *Wells* should have attained twenty-one years certain parts or shares of real estate, to which she was tenant in tail, and certain personal estate, to which she was entitled, should be conveyed and assigned to the trustees of the settlement upon the trusts thereafter declared, and by the same indenture Mr. *Wells* assigned to the trustees a policy of assurance on his life for the sum of £3000, and the moneys thereby secured and which might become payable thereunder, upon trust to invest the same, and to stand possessed thereof upon the trusts in the said indenture declared, which (so far as material) were trusts after the death of Mrs. *Wells* for all and every or such one or more exclusively of the other or others of the children of the marriage as Mr. and Mrs. *Wells* should by deed appoint, and in default of such appointment then as the survivor of them "by any deed or deeds, writing or writings, with or without power of revocation and new appointment to be by him or her sealed and delivered in the presence of two or more credible witnesses or by his or her last will and testament in writing" should direct or appoint, and in default of such last mentioned appointment in trust for all and every the children or child of the marriage who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain such age or respectively marry under that age, equally to be divided between them. The marriage was duly solemnized; no appointment was ever made in exercise of the joint power reserved to Mr. and Mrs. *Wells*; and Mrs. *Wells* died on the 5th of April, 1857. There were six children of the marriage, viz., *Rose*, who died an infant and unmarried in 1864, the Defendant *William Howley*, the eldest son and heir-at-law of Mrs. *Wells*; *Frances*, who married in 1867 the Defendant *John Duncan Cameron*, and died in 1871 intestate, leaving three children who were still infants and were Defendants, the Defendant *Francis John*, and two other daughters who were Defendants, viz., *Mary Julia*, who in 1886 married the

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Defendant *Charles Outen Fulbrook*, and *Charlotte Anne*, who in 1872 married the Defendant *Martin Thomas Friend*.

No disentailing deed of the shares of real estate by the settlement covenanted to be conveyed to the trustees thereof was ever executed by Mrs. *Wells*, and on her death the Defendant *W. H. Wells* became entitled thereto as tenant in tail; and ever since her death he had been in possession thereof.

By a deed-poll dated the 27th of July, 1864, and duly executed and attested, Mr. *Wells*, after recitals to the effect (*inter alia*) that Mrs. *Wells* had died without having barred her estate tail in the above mentioned parts or shares of real estate, and that the Defendant *W. H. Wells* was her heir in tail, it was witnessed that Mr. *Wells*, in exercise of the power contained in the indenture of settlement of the 31st of January, 1842, directed and appointed that all the trust funds and premises comprised in or subject to the trusts of the said indenture of settlement other than the real estate of which Mrs. *Wells* was tenant in tail (including therein the proceeds of sale of part of such real estate which had been sold, and the income thereof), should thenceforth remain and be in trust for such of them the said *Frances Wells*, *Mary Julia Wells*, *Charlotte Anne Wells*, and *Francis John Wells*, as being a son should attain the age of twenty-one years, or being daughters or a daughter should attain such age or should respectively marry under that age, equally between them, if more than one, as tenants in common; and it was thereby provided that it should be lawful for Mr. *Wells* by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be executed as therein mentioned, or by his last will and testament in writing, or any writing in the nature thereof, or any codicil thereto, to revoke all or any of the trusts thereinbefore declared, and by the same deed or deeds, writing or writings, or by any other deed or deeds, writing or writings, executed as aforesaid, with or without power of revocation and new appointment, or by his last will and testament in writing, or any writing in the nature thereof, or any codicil thereto, to appoint or declare any new or other trusts for or for the benefit of some or one of the children of the marriage of or concerning the premises the trusts whereof should be so revoked.

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STIRLING, J. After the execution of this deed-poll the trustees of the settlement divided the whole of the trust funds comprised therein (with the exception of the moneys secured by the above-mentioned policy of assurance upon the life of Mr. Wells) equally between the four children named in such deed-poll, and upon the occasion of the payments to each of such four children of their respective shares they severally executed releases to the trustees of the settlement from all claims and demands in respect of any part or share of any fund subject to the trusts thereof, or on account of any trust, matter, or thing relating to the settlement antecedent to the dates of the several releases respectively.

Mr. Wells duly made his last will, dated the 3rd of September, 1869, and thereby, after reciting that, under the settlement made on his marriage with his late wife, certain sums of money were settled upon the trusts in the said settlement mentioned, and that the settlement contained a power enabling him either by deed or deeds executed as thereafter mentioned, or by his last will and testament, to appoint and dispose of the said trust funds between and amongst his children in such proportions as he should think proper, the testator directed and appointed as follows:—"Now I, in exercise and execution of the said power and of all other powers enabling me in that behalf, do by this my last will and testament direct, limit, and appoint that the trustees or trustee for the time being of the said settlement shall pay, assign, and transfer the sum of £781 to my son *William Howley Wells*, his executors, administrators, and assigns, the sum of £650 to each of my daughters, *Mary Julia Wells* and *Charlotte Anne Wells*, and the sum of £1100 to my son *Francis John Wells*, and I further appoint the residue of the said trust fund to and in favour of my son the said *William Howley Wells*, his executors, administrators, and assigns."

By a second deed-poll, duly executed and dated the 15th of March, 1878, after reciting (*inter alia*) the deed-poll of the 27th of July, 1864, the death of Mrs. Cameron leaving three children, the division as above mentioned amongst the four children named therein, and that the only fund then remaining subject to the trusts of the settlement of the 31st of January, 1842, was the sum of £3000 secured by the policy on his life and the

bonuses thereon, Mr. *Wells*, in exercise of the power by the deed-STIRLING, J.  
poll of the 27th of July, 1864, reserved to him, and of every other  
power, revoked, determined, and made void the appointment in  
the last-mentioned deed-poll contained, and the trusts and pro-  
visions in the same deed-poll declared concerning the premises  
thereby appointed, and, in further exercise of the power by the  
same deed given to him and of every other power, directed and  
appointed that the sum of £3000 to become payable under the  
said policy should be held by the trustees of the settlement  
upon trust to pay one-fifth part to the Defendant *William Howley  
Wells*, one other fifth part to the Defendant *Mary Julia Fulbrook*,  
one other fifth part to the Defendant *Charlotte Anne Friend*, one  
other fifth part to the Defendant *Francis John Wells*, and that  
the said trustees should hold the remaining one-fifth part in  
trust for the three children of the said *Frances Cameron* in  
manner therein mentioned; and secondly, that all bonuses in  
respect of the said policy should be paid to the Defendant  
*William Howley Wells*. And by the deed-poll now in statement  
it was provided that it should be lawful for Mr. *Wells*, by any  
deed or deeds, writing or writings, with or without power of  
revocation and new appointment, to be executed as therein men-  
tioned, or by his will and testament, or any codicil thereto, to  
revoke all or any of the trusts thereinbefore directed, and to  
appoint or declare any new or other trusts to or for the benefit of  
some or one of his children of and concerning the premises the  
trusts whereof should be so revoked.

By a deed-poll duly executed, and dated the 17th of Novem-  
ber, 1883, Mr. *Wells* released the appointment made by the deed  
of the 15th of March, 1878, in favour of *William Howley Wells*,  
from the power of revocation and new appointment therein con-  
tained, and directed and appointed that the appointment by the  
deed-poll of the 15th of March, 1878, made in favour of *William  
Howley Wells*, should be final and irrevocable, and take effect  
accordingly; and it was declared that nothing therein contained  
should prejudice or affect the power of revocation and new  
appointment contained in the deed-poll of the 15th of March,  
1878, so far as the same extended to appointments thereby made  
other than that made in favour of *William Howley Wells*.

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STIRLING, J. Mr. *Wells* died on the 21st of March, 1888, and his will was proved on the 24th of July, 1888.

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*Buckley*, Q.C., and *H. King*, for the Plaintiffs, stated the facts of the case.

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*Hastings*, Q.C., and *Prior*, for the Defendant *William Howley Wells*:—

The will operated at any rate as to the one-fifth share, which the testator, by the deed of 1878, purported to appoint to the children of Mrs. *Cameron* who were not objects of the power. Having regard to the recitals in the deeds of 1864 and 1878, and to the releases executed, there can be no case of election as against *William Howley Wells*.

*Warrington*, for the appointees under the deed-poll of the 15th of March, 1878, other than *William Howley Wells* and the infant children of Mrs. *Cameron*:—

It must be conceded that if the will had been made after the deed-poll of March, 1878, it would have operated as an exercise of the power of revocation and new appointment contained in that deed, for it refers to the original power, and disposes of all the property subject thereto in a manner inconsistent with the appointment by deed: *Sugden* on Powers (1). Then, under sect. 24 of the *Wills Act*, every will is to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. Here there is no contrary intention apparent on the will: the testator died in 1888, and the will, though dated before the deed, must take effect as if it had been dated after it, and consequently must operate as an exercise of the power. Accordingly the will, speaking from the death of the testator, is a final exercise of the power, and is the governing document, except as regards the appointment to *William Howley Wells* in the deed-poll of the 15th of March, 1878, which was made irrevocable by the deed-poll of November, 1883: *Airey v. Bower* (2). *William Howley Wells* must therefore elect between the real estate which he took

(1) 8th Ed. pp. 278, 290.

(2) 12 App. Cas. 263.

against the settlement as tenant in tail upon his mother's death **STIRLING, J.** without having disentailed, and the benefits which he took under the settlement by means of the appointment of 1878 in exercise of a power contained in the settlement.

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*Henry Fellows*, for the trustees of the settlement on the marriage of Mr. and Mrs. *Cameron*, and for the infant children of the marriage:—

It cannot be contended that the infant children of Mrs. *Cameron* take under the appointment of 1878, for they are not objects of the power; but the one-fifth ineffectually appointed in their favour by the deed of 1878, was effectually appointed by the will; and *William Howley Wells* is put to his election between the real estate, and the benefits given to him by the will.

*Methold*, for Mrs. *Fulbrook*, and Mr. and Mrs. *Friend*, and their trustees:—

The will could not be a revocation of an appointment which was non-existent at its date. An intention to revoke a subsisting appointment is essential to the valid exercise of a power of revocation and new appointment: *Pomfret v. Perring* (1); *Griffiths v. Gale* (2). The *Wills Act* does not operate with regard to special powers in the same manner as it does with regard to general powers: *In re Ruding's Settlement* (3).

*Warrington*, in reply:—

*In re Ruding's Settlement* was overruled by *Boyes v. Cook* (4) and *In re Clark's Estate* (5). A power of revocation may be exercised by an instrument which does not expressly refer to the power: *Cooper v. Martin* (6).

*Hastings*, in reply upon the question of election:—

The doctrine of election depends upon intention: *In re Vardon's Trusts* (7); and the recitals in the deed-poll of the 15th of March, 1878, shew clearly that the appointor intended that no case of election should arise.

(1) 5 D. M. & G. 775.

(4) 14 Ch. D. 53.

(2) 12 Sim. 354.

(5) Ibid. 422.

(3) Law Rep. 14 Eq. 266.

(6) Law Rep. 3 Ch. 47.

(7) 31 Ch. D. 275.



STIRLING, J. Aug. 7. STIRLING, J. (after stating the facts of the case, continued) :—

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The first question is whether the will of 1869 executed the power of revocation contained in the subsequent deed-poll of the 15th of March, 1878. The argument in support of the contention that it did, is based on two propositions: first, that if the will had borne date subsequent to the deed-poll, it would have operated as an execution of the power of revocation and new appointment; secondly, that by virtue of sect. 24 of the *Wills Act* the will, though dated before the deed-poll, speaks from the death of the testator, and has the same effect as if it had been dated subsequently to that deed.

Now as to the first proposition, the case of *Pomfret v. Per-ring* (1) establishes that an instrument which exercises a power of revocation and new appointment must shew, not merely an intention to appoint, but an intention to revoke the subsisting appointment. In that case the donee of a special power under a settlement, to be exercised by deed or will, partially exercised it by deed, reserving a power of revocation. Afterwards the donee made a will, and, by virtue of every power contained in the settlement, "or otherwise howsoever," appointed all the real and personal estate, which under the settlement, "or otherwise," she had power to appoint: and it was held that the will operated on the unappointed part only, and was not an exercise of the power of revocation and new appointment.

In that case *Knight Bruce*, L.J., said (2): "I apprehend that it is not according to the true import or correct interpretation of the words used by the testatrix to say, that they exhibit of themselves an intention to exercise a power of revocation. But if the will shews an intention to have existed, which, without so construing them, cannot be effectuated, they may certainly be so construed. I conceive, however, that the will here does not shew such an intention. Every word of the instrument may, in my opinion, be satisfied without ascribing to the testatrix any idea of dealing with the power of revocation or the property subjected to it."

Then *Turner*, L.J., said: "Here an actual appointment has been made with a power of revocation, and that appointment was

(1) 5 D. M. & G. 775.

(2) 5 D. M. & G. 780.

to be undone, before the power of new appointment would arise. STIRLING, J. To shew that a power of this description has been exercised, it is not, I think, enough to shew an intention to appoint; an intention to revoke the former appointment ought, I think, also to be shewn. The principles acted on in other cases, with respect to the exercise of powers, seem to me to apply to this. If a person has an interest in one subject, and a power over another, and uses general words of disposition only, those words will not operate as an exercise of the power. It is otherwise when he has no interest, but only a power. The same principle must, I think, apply to a case where a person has a power of appointment and also a power of revocation and new appointment. The general words of appointment ought not to be held to be an exercise of the power of revocation. If there was no power except one of revocation and new appointment, it would be different, and the general words would be then held to be an exercise of that power. I think it clear that an intention must be shewn to revoke and undo what has been already done."

It appears, therefore, that, in the words of *Turner*, L.J., "the intention to revoke and undo what has been already done," may either appear by the express terms of the instrument or be inferred from the circumstances that the will would otherwise be ineffectual. This agrees with what is laid down by Lord *St. Leonards* in the passage cited from his treatise on Powers (see *Sugden* on Powers (1)); and by Lord *Cairns* in *Cooper v. Martin* (2).

The foundation, however, for such inference is this: that no other explanation can be given of the language used by the donee of the power.

In the present case, if the will of 1869 had borne date subsequently to the deed-poll of 1878, I am unable to see how effect could be given to it except by means of an exercise of the power of revocation contained in the deed-poll; and consequently I think that, in that event, the intention to exercise that power might have been inferred.

In my opinion, therefore, the first of the two propositions is well-founded.

(1) 8th Ed. p. 290.

(2) Law Rep. 3 Ch. 47, see p. 56.

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STIRLING, J. The second proposition assumes that sect. 24 applies to wills made in the exercise of a special power of appointment, such as is contained in the settlement of 1842. Now, that power is one of selection and distribution. The property affected by it is vested in the trustees of the settlement. The office of a will made in exercise of the power is, not to pass that property, but to indicate to the trustees which of the children of the marriage are to enjoy the property beneficially, and in what shares and for what interests: and the will operates and takes effect by being read into and becoming part of the settlement. The question then arises, whether such a will can be said to "comprise" the property subject to the trusts of the settlement.

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I have been unable to find any decision which enables me to answer that question either way. Certainly the cases of *Boyes v. Cook* (1) and *Airey v. Bower* (2), which were referred to in the argument, do not cover the point. Both of them relate to general powers of appointment. They establish that a will containing a general devise or bequest operates (unless a contrary intention appears by the will) as an exercise of a general power of appointment created (even by the testator himself) subsequently to the date of the will; but this conclusion does not rest on sect. 24 of the *Wills Act* alone; it is arrived at through the combined operation of sects. 24 and 27. Now the language of sect. 27 is remarkable. It relates to general powers, and provides that "a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may

(1) 14 Ch. D. 53.

(2) 12 App. Cas. 263.

think proper, and shall operate as an execution of such power, STIRLING, J. unless a contrary intention shall appear by the will."

It was thought necessary, therefore, to provide, not merely that the general devise or bequest should operate as an exercise of the power, but that it should be construed to "include" (which seems to be equivalent in meaning to "comprise") the real or personal estate subject to the power.

This seems to have been done for the purpose of making sect. 24 applicable.

In *Airey v. Bower* (1) the Lord Chancellor appears to allude to this when he speaks of the Legislature having provided that a general power of appointment should be treated as the property of the testator.

None of this reasoning applies to special powers. It is, however, unnecessary in this case to decide whether sect. 24 applies to a will made in exercise of a special power such as exists in the settlement of 1842; for I have come to the conclusion that, even if it does, still the consequences sought to be deduced do not follow.

The question, it is to be borne in mind, is whether the testator has shewn an intention not merely to appoint the fund, but also to revoke an appointment actually made. Apart from the section of the *Wills Act*, no such intention could be inferred where the will bears a date prior to that of the instrument which reserves the power of revocation. Sect. 24 provides that "every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will." That is a very different thing from saying that the will is for all purposes to speak and take effect as if it had been executed immediately before the death of the testator. The question is one of intention, and of intention to undo what has been done; and, for the purpose of ascertaining the intention, I am entitled to look, not merely at the part of the will which immediately deals with the subject-matter, but also at any other part of the instrument, including the date; and the date appears to me to shew decisively that no intention

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STIRLING, J. to undo what was only done at a subsequent time can be attributed to the testator, and that his language is to be ascribed to a totally different cause. In my judgment the terms of the section are not such as to compel me to impute to the testator an intention which manifestly never existed in fact.

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I am of opinion, therefore, that the will of 1869 does not operate to revoke the deed-poll of 1878.

That deed, however, purports to appoint one-fifth of the fund to the children of Mrs. *Cameron*, being grandchildren of the testator: and as the power only authorizes an appointment to children of the testator, the deed is to this extent ineffectual.

The next question is as to what becomes of this one-fifth share? Now the deed-poll of 1878, though it removes four-fifths of the fund from the operation of the will of 1869, does not purport to revoke that will: and although it can hardly be doubted that the testator, had he known the true effect of the deed of 1878, would have made some other disposition of the remaining one-fifth, yet sect. 19 of the *Wills Act* provides that "no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances." It was hardly disputed, and I think properly, that as to this one-fifth, the will of 1869 remains in force, and that that share of the fund must go and devolve accordingly.

There still remains the question whether *William Howley Wells*, the eldest son and heir-in-tail of Mrs. *Wells*, is bound to elect between the real estate which devolved on him as such heir-in-tail, and the benefits coming to him under the deed-poll of 1878 and the will of the testator.

Now, the general intention of the author of every instrument is, no doubt, presumed to be that effect shall be given to every part of it; but such intention, to use the words of Lord Justice *Fry* in *In re Vardon's Trusts* (1), "may be repelled by the declaration in the instrument itself of a particular intention inconsistent with the presumed and general intention;" and such particular intention may obviously repel the general intention either wholly or in part.

In the present case there is not to be found in the settlement

(1) 31 Ch. D. 275, 279.

of 1842 any indication of a particular intention inconsistent with the general and presumed intention. Under that deed, however, *Francis Ballard Wells*, in the events which happened, had power to appoint the property subject to the settlement among the children of the marriage. It was open to him, I apprehend, expressly to direct that the benefits conferred by any appointment on *William Howley Wells* should in addition to those taken be by him as heir-in-tail of his mother: and such express directions, if actually given, would, on the principle of *In re Vardon's Trusts* (1), have excluded the doctrine of election. No express direction is to be found in the deed-poll of 1878: and the question is whether a like intention is not to be inferred.

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Now, by the deed-poll of 1864 the testator took notice that the real estate covenanted by Mrs. *Ballard Wells* to be settled had devolved on *William Howley Wells* as her heir-in-tail: and he made an appointment under which *William Howley Wells* took no interest; and on the footing of this appointment a considerable portion of the trust funds was distributed.

By the deed-poll of 1878 the testator took notice of the deed-poll of 1864, and the distribution made in pursuance of it, and it is then recited "that the only fund now remaining subject" to the trusts of the settlement was the sum of £3000 secured by the policy, and upon that footing he proceeds to revoke the deed of 1864, and to make a fresh appointment under which *William Howley Wells* took a share of the policy moneys together with all the bonuses. I think the meaning of that is that what had previously been taken by *William Howley Wells* as well as by the other children was to remain undisturbed, and consequently that the appointor has shewn that particular intention which is sufficient to override the "presumed and general intention" so far as relates to any benefits derived by *William Howley Wells* under the deed-poll of 1878.

No such inference, however, can, as I think, be drawn with reference to the benefits derived by him under the will of 1869, which takes effect by the operation of law, and independently of the intention of the appointor.

(1) 31 Ch. D. 275.

STIRLING, J. I think, therefore, that *William Howley Wells* is not bound to elect as regards any interest taken by him under the deed-poll of 1878; but that he is bound to elect as regards any interest which may be coming to him under the will of 1869.

1889
In re
WELLS'
TRUSTS.

HARDISTY
v.
WELLS.

Solicitors: *Hardisty, Rhodes & Hardisty; Vallance & Vallance.*

W. W. K.