

In re GUYTON AND ROSENBERG'S CONTRACT.

[1901 G. 373.]

*Will—Construction—Devise of Real Estate—Lease.*COZENS-
HARDY J.

1901

July 11, 24.

A testator devised "all my real estate" to one, and bequeathed "all my leasehold estate" to others. He died entitled to the fee simple of certain houses in fee subject to a term, and also entitled to a sub-lease of them for the term less two days outstanding in a mortgagor. He had other freeholds and leaseholds:—

Held, that all the testator's interest in the houses passed by the devise.

THIS was a summons under the Vendor and Purchaser Act, 1874, taken out by a purchaser of freehold houses to have it declared that the vendors had not made out a good title.

The vendors were devisees in trust under the will of William Guyton. William Guyton, who died in June, 1884, had possession of the property under the will of William Robert Roberts.

In 1820 the premises were demised for ninety-nine years at a ground rent of 12*l.* 12*s.* In 1823 the lease was mortgaged by way of sub-lease for the whole term less two days. In 1842 the sub-lease was sold and assigned by the mortgagees to Mr. Ripplingham, a predecessor of the vendors. In 1848 the reversion in fee was conveyed to Mr. Ripplingham. Mr. Ripplingham devised his freehold houses at St. George's-in-the-East to William Robert Roberts, who, on the death of Mr. Ripplingham in May, 1865, entered and had possession till he died in 1872.

William Robert Roberts made a will, dated 1871, whereby he gave and devised "all my real estate, whether in possession, reversion, or remainder, to my friend William Guyton, of 9, Alexandra Road, Norwich, his heirs and assigns, subject to any mortgages affecting the same, and subject also to the payment" of certain annuities. He bequeathed all his leasehold estate to other persons.

The vendors sold to the purchaser Rosenberg subject to the

COZENS-
HARDY J.

1901

GUYTON
AND

ROSENBERG'S
CONTRACT,
In re.

following condition: "The title shall commence with a conveyance dated 25th August, 1848, whereby a predecessor of the deceased acquired the freehold subject to a lease dated 16th November, 1820, at a ground rent of 12*l.* 12*s.* 0*d.* Such predecessor had previously acquired the said lease from a mortgagee by demise, and no objection shall be taken on the ground that the last few days of the said term may be outstanding."

On behalf of the purchaser a requisition was made that a good title had not been made because the sub-lease did not pass under the will of William Robert Roberts by the devise of freehold estate to William Guyton, but passed under the bequest of leasehold estate. The question before the Court was whether this requisition was justified.

J. M. Stone, for the purchaser. The case is not within the words of s. 26 of the Wills Act, which enacts that a general devise of land shall include copyhold and leasehold, for the testator has devised his "real estate," not his "land." Unless there is some special reason from the surrounding circumstances or the context of the will, a leasehold interest is not included in a devise of real estate, notwithstanding s. 26 of the Wills Act: *Wilson v. Eden* (1); *Butler v. Butler* (2); *In re Davison* (3); *In re Uttermare*. (4) Here the testator has given his real estate in one way, his leaseholds in another, and so distinctly separating them.

Peterson, for the vendor. The houses here the subject of contract had, both by the testator and his predecessors, been practically owned and treated as freehold houses. It would be unnatural to suppose that the testator intended to split the ownership up. The tenor of the will is contrary to such a supposition. Apart from s. 26 of the Wills Act, the intention to be derived from the words of the will is to give the property in which he had a freehold interest one way, and the property in which he had a leasehold interest only another way:

(1) (1848) 11 Beav. 237.

(2) (1884) 28 Ch. D. 66.

(3) (1888) 58 L. T. 304.

(4) W. N. (1893) 158.

Mathews v. Mathews (1); *In re Davison* (2); *Moase v. White* (3); *Vallance v. Vallance*. (4)

J. M. Stone, in reply.

COZENS-
HARDY J.

1901

GUYTON
AND
ROSENBERG'S
CONTRACT,
In re.

July 24. COZENS-HARDY J. (after stating the facts). I think it is clear that s. 26 of the Wills Act does not help the vendors. I cannot hold that under the devise of "all my real estate" leaseholds are included, when I find in the same will an express bequest of "all my leasehold estate." This is a "contrary intention" appearing by the will. It remains, however, to consider whether, under the language of this will, and having regard to all the surrounding circumstances, the devise to Guyton, which must be read as a devise of all the testator's freehold property, did not include all his interest in these houses which were his freehold. Upon the whole, I think this is the true view. It seems to me to be consistent with the judgment of Wood V.-C. in *Mathews v. Mathews*. (1) The testator cannot have intended to split up this property into two parts, when it had for many years been enjoyed and dealt with as a freehold estate in possession. The devise passed all his interest in the houses, which were his freehold, and not merely his freehold interest in these houses subject to his leasehold interest therein.

The result is that I must declare that the purchaser's objection is not well founded, and the purchaser must pay the costs of the summons.

Solicitors: *Stones, Morris & Stone*; *Storey, Cowland & Hill*.

(1) (1867) L. R. 4 Eq. 278.

(2) 58 L. T. 304.

(3) (1876) 3 Ch. D. 763.

(4) (1863) 2 N. R. 229.

D. P.