

Silsby Vs. Young

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Court : US Supreme Court

Decided On : 1806

Appeal No. : 7 U.S. 249

Appellant : Silsby

Respondent : Young

Judgement :

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Silsby v. Young

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ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF GEORGIA

SYLLABUS

D. devised all his estate to his executor in trust to convert the same into money, and after payment of debts to invest the surplus in the funds or put it out on interest. He then bequeaths 1,500 to E. to be paid at the age of twenty-one,

subject to the subsequent provisos, and directs 1,000 to be set apart and the interest to be paid to S. during her life, and after bequeathing other pecuniary legacies, says,

"provided that in case the personal estate and the produce arising from the real estate which I shall die seized and possessed of shall not be sufficient to answer the said annuities and legacies hereinbefore by me bequeathed, then and in such case I direct that the said annuities and legacies so by me bequeathed shall not abate in proportion, but the whole of such deficiency (if any there shall be) shall be deducted out of the 1,500 bequeathed to E.,"

whom he also makes his residuary legatee.

The estate was more than sufficient, at the time of the testator's death, to pay all debts, annuities, and legacies, but afterwards, by the bankruptcy of the executor, became insufficient. *Held* that E.'s legacy of 1,500 should be liable to S.'s annuity.

This was a writ of error to the Circuit Court of the United States for the District of Georgia to reverse the decree of that court which dismissed the bill of the complainants, Sarah and Abigail Silsby.

Daniel Silsby, the brother of the complainants and uncle of the defendant Enoch Silsby, being seized and possessed

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of real and personal estate in England and in the State of Georgia, by his will, made in England, on 11 January, 1791, devised all his estate to his, executor W. Gouthit, of London, in trust to turn the same into money or securities for money, and after payment of his debts to place out the surplus upon any public or private securities upon interest or to invest it in the public funds.

He then bequeaths to his nephew, Enoch Silsby, 1,500 sterling, to be paid to him at 21 years of age "subject to the provisos hereinafter mentioned," and directed the interest to be paid to his guardian during his minority, to be applied to his

maintenance and education.

He then directs his trustee to set apart 1,000 sterling, and pay the interest thereof to his sister Sarah during her life for her sole and separate use and disposal, and in case of her death without issue, the principal was to be paid over to Enoch. A similar provision was made for his sister Abigail, the other complainant. And after bequeathing several other pecuniary legacies, he uses the following words:

"Provided always, and I do hereby expressly declare it to be my will and meaning, that in case the personal estate and the produce arising from the real estate which I shall die seized and possessed of, shall not be sufficient to answer the said annuities and legacies herein before by me bequeathed, then and in such case I direct that the said annuities and legacies so by me given and bequeathed shall not abate in proportion, but that the whole of such deficiency (if any there shall be) shall be deducted out of the said sum of one 1,500 herein before by me bequeathed to my said nephew Enoch Silsby. And in case the personal estate and the produce arising from the sale of the real estate which I shall die seized and possessed of shall be more than sufficient to answer and satisfy the several annuities or legacies herein before by me bequeathed, then and in such case I give and bequeath the surplus and residue which shall so exceed the purposes of this my will unto my nephew Enoch Silsby, subject to such conditions as are herein before in this my will mentioned and contained, touching and concerning the said sum of 1,500 sterling, so by me bequeathed as is herein before particularly mentioned. "

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The testator died at Ostend on his way to the United States in February, 1791, leaving real and personal estate more than sufficient to pay all the debts and legacies and which came to the hands of Gouthit, the executor, who paid all the debts and all the legacies excepting those bequeathed to the complainants, and to the defendant, Enoch Silsby, and another legacy of 500 to Daniel Silsby Curtain, but upon these he regularly paid the interest until the year 1796, when he became bankrupt.

The testator in his will mentions that he has in the hands of Harrison, Ansty & Co., of London, 5,000 sterling, for which they allow him an interest of 5 per cent per annum.

Gouthit, in his letter to the complainants of Sept. 7, 1791, says

"I have an excellent offer -- a mortgage for 2,000 -- which, if you think well, I will take it, for if I should at any time see well to place it any where else, by giving six months notice, it would be paid. It is on an estate in Manchester, one of the greatest trading towns in this kingdom, and I can make you 5 per cent sterling on it, which will, you know, be 50 a year for each of you, and you may have it paid as you please, but every six months I think would be best. The gentleman I mean to lend the money to is an old acquaintance of your brother's, and the estate is worth 5,000. He does but want 2,000, so you know nothing can be safer on earth, and I will have the deed so recited as to set forth the money is for your use, &c.; This, I doubt not, but will meet your approbation. I have taken no money out of Harrison's hands, nor even interest, as I have no doubts of its safety, and the interest is going on."

In answer to which the complainants wrote him on 1 Feb., 1792,

"Yours of September 7, you mention an old friend of our dear brother's wanting to hire the 2,000 on mortgage. We would willingly oblige him, but cannot. We choose to let it remain just as our brother left it, and shall draw on you every six months for our interest. "

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Gouthit, before his bankruptcy, drew all the money out of the hands of Harrison, Ansty & Co., who were and always have been solvent and in good credit. He never placed out in any specific funds, the 2,000 from which the complainants' annuities were to arise.

On 20 December, 1791, Gouthit sent a power of attorney to the defendant, Thomas Young, of Savannah, in Georgia, to collect the effects of the testator in

that state, under which power Young obtained letters of administration with the will annexed and took into his possession all the property there, some part of which he paid over to Gouthit. He also, in the year 1800, paid the legacy due to Daniel Silsby Curtain, and part of the 1,500 legacy to Enoch Silsby. Considerable debts due to the estate are still outstanding in Georgia.

At the time of Gouthit's bankruptcy, he was indebted to the estate of his testator in the sum of 5,380 12s. 2d. sterling, but the commissioners refused to admit him as executor of the testator to prove the same as a creditor of his own estate, whereupon the legatees, who had not been paid, petitioned the Lord Chancellor of England that Gouthit might be so admitted to prove the debt for their benefits, which his Lordship decreed accordingly, and a dividend of 403 10s. 10d. sterling was received by the Accountant General of the Court of Chancery, but no part of that sum has been received by the complainants.

Enoch Silsby filed a bill in equity in the Circuit Court of the United States for the District of Georgia against Young to compel him to account and pay over to him, as residuary legatee, all the estate remaining in the hands of Young.

The complainants, Sarah and Abigail, filed the present bill in equity in the same court against both Thomas Young and Enoch Silsby, praying that Enoch's legacy of 1,500 may abate in favor of their legacies, and that they may charge the residue of the estate for the balance, and have their 2,000 placed out on good security according to the will, and that they may be paid the arrearages of their annuities out of the 1,500 legacy,

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and out of the residue of the estate which came to the hands of Young.

The judge below (Judge Stephens) dismissed the present bill and decreed, that Young should account to Enoch Silsby upon the other bill in which Enoch Silsby was complainant and Thomas Young defendant.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This being a suit in chancery brought by legatees claiming an account in order to the payment of their legacies, and their bill having been dismissed without an account, the decree can only be supported by showing that there are, in the hands of the administrator, no assets which ought to be applied to the purposes prayed in the bill.

The testator having bequeathed to each of his two sisters, Sarah and Abigail, who are the complainants, the interest on one thousand pounds sterling, and that being in arrears, and assets having come to the hands of his representative, the complainants are certainly entitled to an account unless they have forfeited all pretensions to their legacies.

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The defendants say they have forfeited their rights

1st. By a letter, selecting a particular debt in satisfaction of their legacy, which debt is lost.

2d. By their laches.

The better to understand the correspondence, which is relied upon, it must be recollected that by the will, the whole estate, real and personal, of the testator was devised to executors and trustees, who were directed to place it out on public or private security, in such manner as should, in their judgment, best promote the interests of the legatees. The testator then directs, among other bequests, that his trustees shall set apart one thousand pounds sterling for each of his sisters, the interest of which shall be paid to them during their natural lives, after which the principal is to be divided between the children of each if they should marry and have children, but is given to his nephew, Enoch Silsby, in the event of the first legatees' dying unmarried or without children.

This duty of the executor and trustee being thus plainly marked, he addressed a letter to the legatees in September, 1791, in which he mentions an offer which had been made him of a mortgage of 2,000, the amount of the sums to be set apart for them, which he will take if it meets their approbation. If the plaintiffs had taken this mortgage and the title had proved defective or the mortgaged property had been destroyed, they would most probably have forfeited all claims upon the estate of their testator and would have been at least censured by the legatee in remainder for having destroyed, by an improvident intervention in the management of the estate, his right to the principal sum on their dying unmarried. Such an interference on their part was unnecessary, because the executor was authorized by the will to place the estate either on private or public security, as he should think most advantageous, and would have been particularly indiscreet because they could neither judge of the validity of the title nor of the value of the premises proposed to be mortgaged. To have intermeddled

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with the subject would therefore have been in them a departure from propriety and common prudence not to be accounted for nor justified.

Under these circumstances, they say,

"You mention an old friend of our dear brother's wishing to hire the 2,000 on mortgage. We would willingly oblige him, but cannot. We choose to let it remain just as our brother left it."

To the Court it seems that this letter will admit of but one construction. It is a plain declaration that they do not mean to intermeddle with the duties of the executor, but to leave him to perform them according to the directions of his testator. "We choose to let it [the legacy of 2,000] remain just as our brother left it" is plainly saying that the legacy must remain on the foundation on which the will placed it. The construction which would convert these words into a declaration that they chose the debts of their testator not to be collected, and that they chose to take upon themselves the hazard of the solvency of any particular debtor, whose debt

should remain outstanding, or of the executor, if he should happen to collect it, is really too violent a distortion of them to be tolerated for an instant.

As little foundation is there for the allegation that the rights of the complainants have been forfeited by their laches. The Court can perceive no laches on their part. It was not particularly incumbent on them to incur the expense of inquiring into the manner in which the executor performed his trust with respect to the estate at large. They received their interest regularly, and there was no circumstance to awaken a suspicion that they were in danger. On the residuary legatee and on his father and natural guardian it was more particularly incumbent to examine into the conduct of the executor, and though he may be perfectly excusable for not having done so, he cannot throw the loss on others whose conduct has been perfectly faultless.

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The Court is therefore clearly and unanimously of opinion that the complainants have not forfeited their rights, and consequently that the decree must be reversed and an account directed.

In considering the principles on which the account is to be taken, the Court thinks it perfectly clear that the specific pecuniary legacies must be set apart before the defendant Enoch Silsby can be entitled to the residuum. The words annexed to the bequest of the residuary estate which subject it to the same conditions with the bequest of the 1,500 are understood by the Court to relate to the condition of payment at the age of 21 and to the limitations over in case of the death of the residuary legatee, not to the question of abatement, and a residuum, *ex vi termini*, is that which remains after particular legacies are satisfied.

The Court is also of opinion that if there be not sufficient assets to satisfy all the specific legacies, the loss must fall exclusively on the 1,500 given to Enoch Silsby, until that fund be exhausted.

It has been argued that the words of the will limit this charge on that legacy to the contingency of an insufficiency of assets at the death of the testator. The words are

"It is my will and desire that if the personal estate and the produce arising from the real estate of which I shall die seized and possessed shall not be sufficient to answer the several annuities and legacies herein before by me bequeathed, then and in such case I direct that the annuities and legacies shall not abate in proportion, but that the whole of such deficiency, if any there be, shall be deducted out of the said sum of 1,500 hereinbefore by me bequeathed to my said nephew Enoch Silsby."

These words have undergone a very critical examination, and it has been contended that the time at which the sufficiency mentioned in the will is to be determined is fixed by the testator at his death in like manner as if the expression had been "if my estate shall not, at the time of my death, be insufficient," &c.; But the words do not appear to the Court to demand such an interpretation. The words "the personal and real estate of

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which I shall die seized and possessed" are no more in substance than the words "all my real and personal estate" would have been. They describe the subject on the insufficiency of which an abatement of a particular legacy is to take place, but not the time when that insufficiency is to be tested. In the opinion of the Court, that time is when the will is carried into execution by the application of the funds to their object. If, when that application is made, a deficiency appears, "then and in that case" it is that the abatement is to take place in the specific legacy to Enoch Silsby.

This specific pecuniary legacy, being given to the same person to whom the residuum is given, and on the same terms, assumes completely the character of a residuary bequest, and the testator does not appear to have intended to give it any preference over the residuum. He seems to have intended certain provisions to his

relations, the extent of which were apportioned to his opinion of their necessities, and which he did not leave in a situation to be enlarged or diminished by any incident which might affect the state of his affairs. Should his property be merely sufficient to pay those annuities and legacies, they were to sustain no deduction; should it be ever so much enlarged, they were to receive no increase; but all he might possess exceeding those specific donations was to be given to his nephew. His bounty to his other legatees was measured; that to his nephew was not defined. As in every case where specific legacies are first given, so in this, it is the intent of the testator to prefer the specific legatees. There would have been no motive for giving a specific legacy, subject exclusively to abatement in case of deficiency, to the residuary legatee but for the purpose of providing a fund for his education and maintenance during his infancy. For every other purpose, this particular legacy to Enoch Silsby is to be considered as a part of the residuum.

It is not easy to assign a motive in the testator for intending a preference to his specific over his residuary legatee, in the event of an insufficiency of assets at his death, which would not equally apply to an insufficiency which should take place afterwards. The only motive for this preference which could possibly have existed

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was his wish that, if the fund should not be adequate to pay all his legacies, yet no deduction should be made from those which were particularly bequeathed. This wish originated in his particular feelings towards his relations, and could not depend on the insufficiency which he provided against taking place at the time of his death or a few months or years afterwards. If, at the time of his death, his estate had been sufficient, but before it could be collected and applied according to his will, bankruptcies or any other casualties had occasioned a deficiency, no reason can be perceived by the Court for supposing that the contemplation of such a deficiency would have induced him to make a different arrangement of his affairs, from what he would have made had he contemplated a deficiency at his death. And between such a deficiency and one occasioned by the fault or misfortune of an executor, chosen, not by his legatees but by himself, the Court can perceive no distinction.

It is therefore the opinion of this Court that the decree of the circuit court be reversed and that the cause be remanded to the circuit court that an account may be taken in order to a final decree.

Reversed.

DECREE.

This cause came on to be heard on the bill, answers, exhibits, and other testimony in the cause, and was argued by counsel, on consideration whereof the Court is of opinion that there is error in the decree of the circuit court in directing the bill of the complainants to be dismissed, and that the same ought to be reversed and annulled. And this Court doth farther direct and order that the said cause be remanded to the circuit court that accounts may be taken of the assets which are in the hands of the defendant, Thomas Young, of the payments which have been made to Enoch Silsby and of the sums which are due to the complainants and of such other matters as may be necessary to a final decree.

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