

Smith Vs. Edrington

Smith Vs. Edrington

SooperKanoon Citation : sooperkanoon.com/78613

Court : US Supreme Court

Decided On : 1814

Appeal No. : 12 U.S. 66

Appellant : Smith

Respondent : Edrington

Judgement :

Smith v. Edrington - 12 U.S. 66 (1814)

U.S. Supreme Court Smith v. Edrington, 12 U.S. 8 Cranch 66 66 (1814)

Smith v. Edrington

12 U.S. (8 Cranch) 66

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF VIRGINIA

SYLLABUS

Decided that under the statute of Virginia respecting wills, it is necessary (in order that lands acquired after the date of the will may pass by the will) that the intention of the testator should clearly appear upon the face of the will.

The bill sought to charge the lands of Christopher Edrington in the hands of his son and heir at law, W. P. Edrington, with a debt due by his father, Christopher Edrington, to the complainants by simple contract.

It was contended that the lands passed by the will of Christopher Edrington to his son, W. P. Edrington, charged with the payment of the debts of the testator,

Page 12 U. S. 67

although the lands were acquired by the testator after the date of the will.

The will expressed a desire that all the just debts of the testator should be paid by his executors as soon as the means in their power should permit. It also authorized his executors to dispose of and convey any of his property that might be necessary for payment of his debts, and afterwards it has these expressions:

"Should my son, Wm. P. Edrington, to whom I bequeath the whole of my property, after the payment of my debts, and provisions above made, die under the age of 21 years, I then give,"

&c.; The testator then proceeds to make certain pecuniary bequests in the event of his son's so dying, and concludes by disposing of the residue of his property.

At the date of the will, the testator had no lands. Those which the bill sought to charge were purchased a short time before his death.

By an act of the Legislature of Virginia in force at the date of the will, 1 Rev.Co.P.P. 160, it is enacted

"That every person aged 21 years and upwards, being of sound mind, and not a married woman, shall have power, at his will and pleasure, by last will and testament in writing to devise all the estate, right, title and interest in possession, reversion, or remainder which he hath or at the time of his death shall have of, in, or to lands,"

&c.;

The court below dismissed so much of the complainant's bill as sought to charge the lands in the hands of the heir, and they appealed to this Court.

Page 12 U. S. 68

WASHINGTON, J. delivered the opinion of the Court as follows:

This was a bill filed on the equity side of the Circuit Court for the District of Virginia by the appellants in order to charge the real estate of Christopher Edrington in the hands of his son and heir at law, William P. Edrington, with the payment of a debt due to the appellants

Page 12 U. S. 69

by Christopher Edrington, the father. The appeal being taken from that part of the decree of the circuit court which dismissed the bill so far as it seeks to subject the real estate in the hands of Wm. P. Edrington to the payment of the appellant's demand, the only question now to be considered is whether the will of Christopher Edrington can be so construed as to charge his real estate with the payment of his debts.

The clauses of the will relied upon by the appellant's counsel for this purpose are that which expresses the devise of the testator that all his just debts should be paid by his executors, &c.;, so soon as the means in their power should permit; also another which authorizes his executors to dispose of and convey any of his property that might be necessary for payment of his debts, and a third which is still stronger, and is expressed as follows:

"Should my son, Wm. P. Edrington, to whom I bequeath the whole of my property, after the payment of my debts and provisions above made, die under the age of 21 years, I then give,"

&c.; The testator then proceeds to make certain pecuniary bequests in the event of his son's so dying, and concludes by disposing of the then residue of his property.

At the time that this will was made, it is admitted that the testator was not possessed of or entitled to any estate in land, but that afterwards and a short time previous to his death, he purchased the tract of land which this bill seeks to charge. By an act of the Legislature of Virginia passed in the year 1785 and long before the date of this will, it is declared

"That any person aged 21 years and upwards, being of sound mind and not a married woman, shall have power, at his will and pleasure, by last will and testament in writing, to devise all the estate, right, title, and interest, in possession, reversion, or remainder which he hath or at the time of his death shall have of, in, or to lands,"

&c.; The circumstance, therefore, that the land in question was acquired after the execution of the will presents no difficulty in this case if it appears that it was the intention of the testator to devise it to his son, because if it passes at all under the will, it may readily be admitted that the devisee took it subject to the payment of the testator's debts, the parts of the will above recited being

Page 12 U. S. 70

strong to impose such a charge. But although a testator may, under the above law, dispose by will of after-purchased lands, it is nevertheless necessary that his intention to make such a disposition should clearly appear upon the face of the will. The rule in England as well as in Virginia at the time this law was passed was that a will, as to land, speaks at the date of it, and as to personal estate at the time of the testator's death. The law created no new or different rule of construction, but merely gave a power to the testator to devise lands which he might possess or be entitled to at the time of his death if it should be his pleasure to do so. The presumption is that the testator means to confine his bequests to land to which he is then entitled, and this presumption can only be overruled by words clearly showing a contrary intention.

In this will there are no expressions which indicate an intention to devise, or in any manner to charge, lands which the testator might afterwards acquire. It does not

appear that the testator contemplated, at the time he made his will, the purchase of any land, and the words "estate" and "property" to be found in it may be fully satisfied by applying them to the personal property of which he was possessed.

It is therefore the opinion of the Court that there is no error in the decree of the circuit court, and that the same ought to be

Affirmed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com