

Craig Vs. Leslie

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Appellant : Craig

Respondent : Leslie

Judgement :

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U.S. Supreme Court Craig v. Leslie, 16 U.S. 3 Wheat. 563 563 (1818)

Craig v. Leslie

16 U.S. (3 Wheat.) 563

ON CERTIFICATE OF DIVISION OF OPINION AMONG THE JUDGES

OF THE CIRCUIT COURT FOR THE DISTRICT OF VIRGINIA

SYLLABUS

R.C. a citizen of Virginia, being seized of real property in that state, made his will:

"In the first place I give, devise, and bequeath unto J.L. [and four others] all my estate, real and personal, of which I may die seized and possessed in any part of America, in special trust that the aforementioned persons or such of them as may be living at my death will sell my personal estate to the highest bidder, on two years' credit, and my real estate on one, two, and three years' credit, provided satisfactory security be given by bond and deed of trust. In the second place, I give and bequeath to my brother T.C. [an alien] all the proceeds of my estate, real and, personal, which I have herein directed to be sold, to be remitted to him accordingly as the payments are made, and I hereby declare the aforesaid J.L. [and the four other persons] to be my trustees and executors for the purposes aforementioned."

Held that the legacy given to T.C. in the will of R.C. was to be considered as a bequest of personal estate, which he was capable of taking for his own benefit, though an alien.

Equity considers land, directed in wills or other instruments to be sold and converted into money as money, and money directed to be employed in the purchase of land as land.

The heir at law has a resulting trust in such lands, after the debts and legacies are paid, and may come into equity and restrain the trustee from selling more than sufficient to pay them, or may offer to pay them himself, and pray a conveyance of the part of the land not sold in the first case, and the whole in the latter, which property in either case will be land and not money.

Equity will extend the same privilege to the residuary legatee which is allowed to the heir, to pay the debts and legacies and call for a conveyance of the real estate or to restrain the trustees from selling more than is necessary to pay the debts and legacies.

But if the intent of the testator appears to have been to stamp upon the proceeds of the land directed to be sold, the quality of personalty, not only for the particular purposes of the will but to all intents, the claim of the heir at law to a resulting trust

is defeated and the estate is considered to be personal.

Where the whole beneficial interest in the land or money thus directed to be employed belongs to the person for whose use it is given, a court of equity will permit the *cestui que trust* to take the money or the land at his election, if he elect before the conversion is made.

But in case of the death of the *cestui que trust* without having determined his election, the property will pass to his heirs or personal representatives in the same manner as it would have done if the conversion had been made and the trust executed in his lifetime.

The case of *Roper v. Radcliff*, 9 Mod. 167, examined, distinguished from the present case, and, so far as it conflicts with it, overruled.

An alien may take by purchase a freehold or other interest in land and may hold it against all the world except the King, and even against him until office found, and is not accountable for the rents and profits previously received.

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This was a case certified from the Circuit Court for the District of Virginia in which the opinions of the judges of that court were opposed on the following question, *viz.*, whether the legacy given to Thomas Craig, an alien, in the will of Robert Craig is to be considered as a devise which he can take only for the benefit of the commonwealth and cannot hold, or a bequest of a personal chattel which he could take for his own benefit.

This question grows out of the will of Robert Craig, a citizen of Virginia, and arose in a suit brought on the equity side of the Circuit Court for the District of Virginia by Thomas Craig against the trustee named in the will of the said Robert Craig to compel the said trustee to execute the trusts by selling the trust fund and paying over the proceeds of the same to the complainant.

The clause in the will of Robert Craig, upon which the question arises, is expressed in the following terms *viz.*,

"In the first place, I give, devise, and bequeath unto John Leslie [and four others] all my estate, real and personal, of which I may die seized or possessed, in any part of America, in special trust, that the aforementioned persons, or such of them as may be

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living at my death, will sell my personal estate to the highest bidder on two years' credit, and my real estate on one, two, and three years' credit, provided satisfactory security be given by bond and deed of trust. In the second place, I give and bequeath to my brother, Thomas Craig, of Beith parish, Ayrshire, Scotland, all the proceeds of my estate, both real and personal, which I have herein directed to be sold, to be remitted unto him accordingly as the payments are made, and I hereby declare the aforesaid John Leslie [and the four other persons] to be my trustees and executors for the purposes aforementioned."

The Attorney General of Virginia, on behalf of that state, filed a cross-bill against the plaintiff in the original suit, and the trustee, the prayer of which is to compel the trustee to sell the trust estate, so far as it consists of real estate, and to appropriate the proceeds to the use of the said commonwealth by paying the same into its public Treasury.

The will of Robert Craig was proved in June, 1811, and the present suit was instituted sometime in the year 1815.

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MR. JUSTICE WASHINGTON delivered the opinion of the Court.

The incapacity of an alien to take and to hold beneficially a legal or equitable estate in real property is not disputed by the counsel for the plaintiff, and it is admitted by the counsel for the State of

Virginia that this incapacity does not extend to personal estate. The only inquiry, then, which this Court has to make is whether the above clause in the will of Robert Craig is to be construed under all the circumstances of this case as a bequest to Thomas Craig of personal property or as a devise of the land itself.

Were this a new question, it would seem extremely difficult to raise a doubt respecting it. The common sense of mankind would determine that a devise of money, the proceeds of land directed to be sold, is a devise of money notwithstanding it is to arise out of land, and that a devise of land which a testator by his will directs to be purchased will pass an interest in the land itself, without regard to the character of the fund out of which the purchase is to be made.

The settled doctrine of the courts of equity correspond with this obvious construction of wills as well as of other instruments whereby land is directed to be turned into money or money into land for the benefit of those for whose use the conversion is intended to be made. In the case of *Fletcher v. Ashburner*, 1 Bro.Ch.Cas. 497, the Master of the Rolls says, that

"nothing is better established than this principle, that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted, and this, in whatever manner the direction is given."

He adds, "the owner of the fund, or the contracting parties, may make land money, or money

land. The cases establish this rule universally." This declaration is well warranted by the cases to which the Master of the Rolls refers, as well as by many others. See *Dougherty v. Bull*, 2 P.Wms. 320; *Yeates v. Compton*, *id.*, 358; *Trelawney v. Booth*, 2 Atk. 307.

The principle upon which the whole of this doctrine is founded is that a court of equity, regarding the substance and not the mere forms and circumstances of agreements and other instruments, considers things directed or agreed to be done as having been actually performed where nothing has intervened which ought to prevent a performance. This qualification of the more concise and general rule that equity considers that to be done which is agreed to be done will comprehend the cases which come under this head of equity.

Thus, where the whole beneficial interest in the money in the one case, or in the land in the other, belongs to the person for whose use it is given, a court of equity will not compel the trustee to execute the trust against the wishes of the *cestui que trust*, but will permit him to take the money or the land if he elect to do so before the conversion has actually been made, and this election he may make as well by acts or declarations clearly indicating a determination to that effect as by application to a court of equity. It is this election, and not the mere right to make it, which changes the character of the estate so as to make it real or personal, at the will of the party entitled to the beneficial interest.

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If this election be not made in time to stamp the property with a character different from that which the will or other instrument gives it, the latter accompanies it, with all its legal consequences, into the hands of those entitled to it in that character. So that in case of the death of the *cestui que trust* without having determined his election, the property will pass to his heirs or personal representatives in the same manner as it would have done had the trust been executed and the conversion actually made in his lifetime.

In the case of *Kirkman v. Mills*, 13 Ves., which was a devise of real estate to trustees upon trust to sell, and the moneys arising as well as the rents and profits till the sale, to be equally divided between the testators, three daughters, A. B. and C. The estate was upon the death of A. B. & C. considered and treated as personal property notwithstanding the *cestui que trusts*, after the death of the

testator, had entered upon and occupied the land for about two years prior to their deaths, but no steps had been taken by them or by the trustees to sell, nor had any requisition to that effect been made by the former to the latter. The Master of the Rolls was of opinion that the occupation of the land for two years was too short to presume an election. He adds

"The opinion of Lord Rosslyn that property was to be taken as it happened to be at the death of the party from whom the representative claims had been much doubted by Lord Eldon, who held that, without some act, it must be considered as being in the state in

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which it ought to be, and that Lord Rosslyn's rule was new, and not according to the prior cases."

The same doctrine is laid down and maintained in the case of *Edwards v. Countess of Warwick*, 2 P.Wms. 171, which was a covenant on marriage to invest 10,000, part of the lady's fortune, in the purchase of land in fee, to be settled on the husband for life, remainder to his first and every other son in tail male, remainder to the husband in fee. The only son of this marriage having died without issue and intestate, and the investment of the money not having been made during his life, the chancellor decided that the money passed to the heir at law; that it was in the election of the son to have made this money or to have disposed of it as such, and that therefore even his parol disposition of it would have been regarded, but that something to determine the election must be done.

This doctrine, so well established by the cases which have been referred to and by many others which it is unnecessary to mention, seems to be conclusive upon the question which this Court is called upon to decide, and would render any further investigation of it useless were it not for the case of *Roper v. Radcliffe*, which was cited and mainly relied upon by the counsel for the State of Virginia.

The short statement of that case is as follows:

John Roper conveyed all his lands to trustees and their heirs, in trust, to sell the same, and out of the proceeds and of the rents and profits till sale to pay certain debts, and the overplus of the money to be paid as he, the said John Roper, by his will or otherwise

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should appoint, and for want of such appointment for the benefit of the said John Roper and his heirs. By his will reciting the said deed and the power reserved to him in the surplus of the said real estate, he bequeathed several pecuniary legacies and then gave the residue of his real and personal estate to William Constable and Thomas Radcliffe and two others and to their heirs. By a codicil to this will, he bequeathed other pecuniary legacies, and the remainder, whether in lands or personal estate, he gave to the said W.C. and T.R.

Upon a bill filed by W.C. and T.R. against the heir at law of John Roper and the other trustees praying to have the trust executed and the residue of the money arising from the sale of the lands to be paid over to them, the heir at law opposed the execution of the trust and claimed the land as a resulting trust upon the ground of the incapacity of Constable and Radcliffe to take, they being papists. The decree of the Court of Chancery, which was in favor of the papists, was upon appeal to the House of Lords reversed and the title of the heir at law sustained, six judges against five being in his favor.

Without stating at large the opinion upon which the reversal took place, this Court will proceed 1st to examine the general principles laid down in that opinion, and then, 2d, the case itself so far as it has been pressed upon us as an authority to rule the question before the Court.

In performing the first part of this undertaking, it will not be necessary to question any one of the premises laid down in that opinion. They are:

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1. That land devised to trustees, to sell for payment of debts and legacies, is to be deemed as money. This is the general doctrine established by all the cases referred to in the preceding part of this opinion.

2. That the heir at law has a resulting trust in such land, so far as it is of value after the debts and legacies are paid, and that he may come into equity and restrain the trustee from selling more than is necessary to pay the debt and legacies, or he may offer to pay them himself and pray to have a conveyance of the part of the land not sold in the first case and the whole in the latter, which property will in either case be land, and not money.

This right to call for a conveyance is very correctly styled a privilege, and it is one which a court of equity will never refuse unless there are strong reasons for refusing it. The whole of this doctrine proceeds upon a principle, which is incontrovertible, that where the testator merely directs the real estate to be converted into money for the purposes directed in his will, so much of the estate or the money arising from it as is not effectually disposed of by the will, whether it arise from some omission or defect in the will itself, or from any subsequent accident, which prevents the devise from taking effect, results to the heir at law, as the old use not disposed of. Such was the case of *Crewe v. Bailey*, 3 P.Wms. 20, where the testator having two sons, A. and B., and three daughters devised his lands to be sold to pay his debts, &c.;, and as to the moneys arising by the sale, after debts paid, gave 200 to A., the eldest son, at the age of 21, and the residue to his four younger children. A. died before

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the age of 21, in consequence of which the bequest to him failed to take effect. The court decided that the 200 should be considered as land to descend to the heir at law of the testator, because it was in effect the same as if so much land as was of the value of 200 was not directed to be sold, but was suffered to descend. The case of *Ackroyd v. Smithson*, 1 Bro.Ch.Cas. 503, is one of the same kind and establishes the same principle. So likewise, a money provision under a marriage contract, to arise out of land, which did not take effect on account of the

death of the party for whose benefit it was intended before the time prescribed, resulted as money to the grantor, so as to pass under a residuary clause in his will. *Hewitt v. Wright*, 1 Bro.Ch.Cas. 86.

But even in cases of resulting trusts for the benefit of the heir at law, it is settled that if the intent of the testator appears to have been to stamp upon the proceeds of the land described to be sold the quality of personalty, not only to subserve the particular purposes of the will, but to all intents the claim of the heir at law to a resulting trust is defeated, and the estate is considered to be personal. This was decided in the case of *Yeates v. Compton*, 2 P.Wms. 308, in which the chancellor says that the intention of the will was to give away all from the heir and to turn the land into personal estate, and that this was to be taken as it was at the testator's death, and ought not to be altered by any subsequent accident, and decreed the heir to join in the sale of the land, and the money arising therefrom to be

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paid over as personal estate to the representatives of the annuitant and to those of the residuary legatee. In the case of *Fletcher v. Ashburner*, before referred to, the suit was brought by the heir at law of the testator against the personal representatives and the trustees claiming the estate upon the ground of a resulting trust. But the court decreed the property, as money, to the personal representatives of him to whom the beneficial interest in the money was bequeathed, and the Master of the Rolls observes that the cases of *Emblyn v. Freeman* and *Crewe v. Bailey* are those where real estate being directed to be sold, some part of the disposition has failed, and the thing devised has not accrued to the representative or devisee, by which something has resulted to the heir at law.

It is evident, therefore, from a view of the above cases that the title of the heir to a resulting trust can never arise except when something is left undisposed of, either by some defect in the will or by some subsequent lapse, which prevents the devise from taking effect, and not even then, if it appears that the intention of the testator was to change the nature of the estate from land to money, absolutely and

entirely, and not merely to serve the purposes of the will. But the ground upon which the title of the heir rests is that whatever is not disposed of remains to him and partakes of the old use as if it had not been directed to be sold.

The third proposition laid down in the case of *Roper v. Radcliffe* is that equity will extend the same privilege to the residuary legatee which is allowed

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to the heir to pay the debts and legacies and call for a conveyance of the real estate or to restrain the trustees from selling more than is necessary to pay the debts and legacies.

This has in effect been admitted in the preceding part of this opinion, because if the *cestui que trust* of the whole beneficial interest in the money to arise from the sale of the land may claim this privilege, it follows necessarily that the residuary legatee may, because he is in effect the beneficial owner of the whole, charged with the debts and legacies, from which he will be permitted to discharge it by paying the debts and legacies or may claim so much of the real estate as may not be necessary for that purpose.

But the Court cannot accede to the conclusion which, in *Roper v. Radcliffe*, is deduced from the establishment of the above principles. That conclusion is that in respect to the residuary legatee, such a devise shall be deemed as land in equity, though in respect to the creditors and specific legatees it is deemed as money. It is admitted, with this qualification -- that if the residuary legatee thinks proper to avail himself of the privilege of taking it as land by making an election in his lifetime, the property will then assume the character of land. But if he does not make this election, the property retains its character of personalty to every intent and purpose. The cases before cited seem to the Court to be conclusive upon this point, and none was referred to, or have come under the view of the Court which

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sanctions the conclusion made in the unqualified terms used in the case of *Roper v. Radcliffe*.

As to the idea that the character of the estate is affected by this right of election whether the right be claimed or not, it appears to be as repugnant to reason as we think it has been shown to be to principle and authorities. Before anything can be made of the proposition, it should be shown that this right or privilege of election is so indissolubly united with the devise as to constitute a part of it, and that it may be exercised in all cases and under all circumstances. This was indeed contended for with great ingenuity and abilities by the counsel for the State of Virginia, but it was not proved to the satisfaction of the Court.

It certainly is not true that equity will extend this privilege in all cases to the *cestui que trust*. It will be refused if he be an infant. In the case of *Seely v. Jago*, 1 P.Wms. 389, where money was devised to be laid out in land in fee, to be settled on A. B. and C. and their heirs, equally to be divided; on the death of A., his infant heir, together with B. & C. filed their bill claiming to have the money, which was decreed accordingly as to B. and C., but the share of the infant was ordered to be put out for his benefit, and the reason assigned was that he was incapable of making an election and that such election, if permitted, would in case of his death be prejudicial to his heir.

In the case of *Foone v. Blount*, Cowp. 467, Lord Mansfield, who is compelled to acknowledge the authority of *Roper v. Radcliffe* in parallel cases,

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combats the reasoning of Chief Justice Parker upon this doctrine of election with irresistible force. He suggests, as the true answer to it that though in a variety of cases this right exists, yet it was inapplicable to the case of a person who was disabled by law from taking land, and that therefore a court of equity would in such a case decree that he should take the property as money.

The case of *Walker v. Denne*, 2 Ves.Jr. 170, seems to apply with great force to this part of our subject. The testator directed money to be laid out in lands,

tenements, and hereditaments, or on long terms, with limitations applicable to real estate. The money not having been laid out, the Crown, on failure of heirs, claimed the money as land. It was decided that the Crown had no equity against the next of kin to have the money laid out in real estate in order to claim it by escheat. It was added that the devisees, on becoming absolutely entitled, have the option given by the will, and a deed of appointment by one of the *cestui que trusts*, though a *feme covert*, was held a sufficient indication of her intention that it should continue personal, against her heir claiming it as ineffectually disposed of for want of her examination. This case is peculiarly strong from the circumstance that the election is embodied in the devise itself, but this was not enough, because the Crown had no equity to force an election to be made for the purpose of producing an escheat.

equity would surely proceed contrary to its regular course and the principles which universally govern it to allow that right of election where it is desired,

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and can be lawfully made, and yet refuse to decree the money upon the application of the alien upon no other reason but because, by law, he is incapable to hold the land -- in short, to consider him in the same situation as if he had made an election, which would have been refused had he asked for a conveyance. The more just and correct rule would seem to be that where the *cestui que trust* is incapable to take or to hold the land beneficially, the right to election does not exist, and consequently that the property is to be considered as being of that species into which it is directed to be converted.

Having made these observations upon the principles laid down in the case of *Roper v. Radcliffe* and upon the argument urged at the bar in support of them, very few words will suffice to show that, as an authority, it is inapplicable to this case.

The incapacities of a papist under the English statute of 11 and 12 Wm. III, c. 4, and of an alien at common law are extremely dissimilar. The former is incapable to

take by purchase any lands, or profits out of lands, and all estates, terms, and any other interests or profits whatsoever out of lands to be made, suffered, or done to or for the use of such person or upon any trust for him or to or for the benefit or relief of any such person are declared by the statute to be utterly void.

Thus it appears that he cannot even take. His incapacity is not confined to land, but to any profit, interest, benefit, or relief in or out of it. He is not only disabled from taking or having the benefit of any

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such interest, but the will or deed itself which attempts to pass it is void. In *Roper v. Radcliffe* it was strongly insisted that the money given to the papist which was to be the proceeds of the land was a profit or interest out of the land. If this be so (and it is not immaterial in this case to affirm or deny that position), then the will of John Roper in relation to the bequest to the two papists was void under the statute, and if so the right of the heir at law of the testator to the residue as a resulting trust was incontestable. The cases above cited have fully established that principle. In that case too, the rents and profits till the sale would have belonged to the papists if they were capable of taking, which brought the case still more strongly within the statute, and this was much relied on not only in reasoning upon the words, but the policy of the statute.

Now what is the situation of an alien? He can not only take an interest in land but a freehold interest in the land itself, and may hold it against all the world but the King, and even against him until office found, and he is not accountable for the rents and profits previously received. In this case, the will being valid, and the alien capable of taking under it, there can be no resulting trust to the heir, and the claim of the state is founded solely upon a supposed equity to have the land by escheat, as if the alien had or could upon the principles of a court of equity

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have elected to take the land instead of the money. The points of difference between the two case are so striking that it would be a waste of time to notice

them in detail.

It may be further observed that the case of *Roper v. Radcliffe* has never, in England, been applied to the case of aliens; that its authority has been submitted to with reluctance, and is strictly confined in its application to cases precisely parallel to it. Lord Mansfield, in the case of *Foone v. Blount*, speaks of it with marked disapprobation, and we know that had Lord Trevor been present and declared the opinion he had before entertained, the judges would have been equally divided.

The case of *Attorney General v. Lord Weymouth*, Ambler. 20, was also pressed upon the Court as strongly supporting that of *Roper v. Radcliffe* and as bearing upon the present case.

The first of these propositions might be admitted, although it is certain that the Mortmain Act, upon which that case was decided, is even stronger in its expression than the statute against papists, and the Chancellor so considers it, for he says whether the surplus be considered as money or land, it is just the same thing, the statute making void all charges and encumbrances on land for the benefit of a charity.

But if this case were in all respects the same as *Roper v. Radcliffe*, the observations which have been made upon the latter would all apply to it. It may be remarked, however, that in this case the Chancellor avoids expressing any opinion upon the question whether the money to arise from the sale of

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the land was to be taken as personalty or land, and although he mentions the case of *Roper v. Radcliffe*, he adds that he does not depend upon it, as it was immaterial whether the surplus was to be considered as land or money under the Mortmain Act.

Upon the whole we are unanimously of opinion that the legacy given to Thomas Craig in the will of Robert Craig is to be considered as a bequest of personal

estate, which he is capable of taking for his own benefit.

Certificate accordingly.

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