

Walker Vs. Griffin's Heirs

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Court : US Supreme Court

Decided On : 1826

Appeal No. : 24 U.S. 375

Appellant : Walker

Respondent : Griffin's Heirs

Judgement :

Walker v. Griffin's Heirs - 24 U.S. 375 (1826)

U.S. Supreme Court Walker v. Griffin's Heirs, 24 U.S. 375 (1826)

Walker v. Griffin's Heirs

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SYLLABUS

Devise of the testator's estate,

"one-fourth part to be given to the families of G. Holloway, W. B. Blackbourn, and A. Bartlett, to those of their children, that my wife shall think proper, but in a greater proportion to F. P. Holloway, than to any other of G. Holloway's children; to E. P. Bartlett in a greater proportion than any of A. Bartlett's children. The balance to be given to the families of C. and J. T. Griffin's children, in equal proportion."

Held that the children of C. and J. T. Griffin took *per stirpes*, and not *per capita*, and that the property devised to them was to be divided into two equal parts, one moiety to be assigned to each family.

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

This case depends entirely on the will of Francis Peart, deceased. The testator had devised his estate to the County Court of Woodford, in trust for purposes therein mentioned, after which he adds,

"Should the County Court of Woodford not have a right to take into possession this donation of the within will, I do request one-fourth part to be given to the families of G. Holloway, William B. Blackbourn, and A. Bartlett, to those of their children that my wife may think proper, but in a greater proportion to Francis

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P. Holloway than any other of G. Holloway's children; to Elizabeth P. Bartlett in a greater proportion than any of A. Bartlett's children. The balance to be given to the families of Cyrus and John T. Griffin's children, in equal proportion."

The devise to the County Court of Woodford was held void, and thereupon the heirs of Cyrus Griffin, who was dead at the time the will was made, brought a friendly suit against the heirs of John T. Griffin, who was also dead, in the Circuit Court for the District of Kentucky for a division of the property. The circuit court decided that the children were entitled to it in exclusion of the grandchildren, whose parents were living, and that all the children should take in equal proportion. From this decree the heirs of John Taylor Griffin have appealed to this Court.

It is apparent that in the devise of one-fourth to the families of G. Holloway, William B. Blackbourn, and A. Bartlett, the testator intended to designate the children in exclusion of the grandchildren, because he adds "to those of their children that my wife may think proper," obviously having the children only in his mind, and not taking grandchildren into view. When, in the same paragraph and in the

succeeding sentence, he uses the same word in the devise to the families of Cyrus and John T. Griffin, he must be supposed to have used it in the same sense unless the additional words, "children to take in equal proportion" should show a change of intention, and that the property

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was given to the children of the families, and not to the families themselves.

The use of the words "families of Cyrus and John T. Griffin's children" to designate the grandchildren of Cyrus and John T. Griffin would certainly be an unusual as well as awkward mode of describing them, and we think there is no necessity for resorting to this construction. The introduction of these words is to be readily accounted for. In the preceding devise, the testator had directed the children of two of the families to take unequally. In this he intended them to take equally, and therefore makes that provision.

The more difficult inquiry is whether the property is to be divided into two equal parts, the one to be assigned to the family of Cyrus and the other to the family of John T. Griffin, or is to be divided equally among all the children of the two stocks.

In solving this difficulty it becomes necessary again to resort to the preceding sentence.

The families of G. Holloway, Wm. P. Blackbourn, and A. Bartlett take, each family, as a single devisee. Whatever may be the number of persons composing the family and however unequal may be their number, they take, collectively, distinct and equal shares by families, each family constituting an individual devisee. This would be, we think, the natural import of the words if unexplained by others. But we think this construction is strengthened by the residue of the

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sentence. The testator adds

"to those of their children that my wife may think proper, but in a greater proportion to F.P.H. than to any other of G.H.'s children, to E.P.B. in a greater proportion than to any of A.B.'s children."

These words show that the inequalities intended by the testator were between children of the same family, not between the families. Francis P. Holloway was to have more not than any of those who took under the devise, but than any other of G. Holloway's children. So with respect to Elizabeth P. Bartlett. In each case, the share of the family is to be distributed among the children of the family at the discretion of the wife, that discretion being limited so far only that F.P.H. should have more than any other of G.H.'s children, and E.P.B. more than any of A. Bartlett's children.

We think it perfectly clear that the families take in equal proportions.

It is reasonable to suppose that the same intention was preserved with regard to the families of Cyrus and John T. Griffin, and the words must receive the same construction if not controlled by those with which they are connected. Had the devise been to the families of Cyrus and John T. Griffin, the natural and obvious construction would have been that the families took equally. We are, then to inquire what is the effect of the additional words "children in equal proportion." Cyrus Griffin and John T. Griffin were both dead, Cyrus leaving four and John T. Griffin two children, who were living at

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the death of the testator, and were the objects of this devise. Had he intended them to take equally, the natural mode of expressing that intention would have been to devise the property to the children of Cyrus and John T. Griffin. They would then have taken individually, and not by families; but the testator directs them to take by families. Why, then, are the words, "children in equal proportion" added? The testator had in the preceding sentence devised a part of the same property to three families, and had directed that the children of each should take unequally. Proceeding immediately to the two families of the Griffins, it was

natural, though not necessary, to express his wish that the children should take equally. But neither in this nor in the preceding devise does he mingle the children of the different families in one mass. He speaks of them severally by families. We are therefore of opinion that the children of Cyrus and John T. Griffin take by families and that the property devised to them is to be divided into two equal parts, one moiety to be assigned to each family.

DECREE. This cause came on to be heard on the transcript of the record from the Circuit Court for the District of Kentucky, on consideration whereof this Court is of opinion that the children of Cyrus and John T. Griffin took the property devised to them in the will of Francis Peart, deceased, by families. This Court is therefore of opinion that the decree of the

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circuit court is erroneous insomuch as it directs the said property to be divided among the said children *per capita*, and not *per stirpes*, and ought to be REVERSED, and this Court doth so far REVERSE the same, and in all things else it is AFFIRMED. And the cause is remanded to the said circuit court that further proceedings may be had therein according to law.