

Williams Vs. Daniel

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Court : US Supreme Court

Decided On : 1827

Appeal No. : 25 U.S. 568

Appellant : Williams

Respondent : Daniel

Judgement :

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25 U.S. (12 Wheat.) 568

APPEAL FROM THE CIRCUIT

COURT OF GEORGIA

SYLLABUS

An absolute bequest of certain slaves to P.H. is qualified by a subsequent limitation over that if either of the testator's grandchildren, P.H. or J.D.A., should die without a lawful heir of their bodies, that the other should heir its estate, which

converted the previous estate into an estate tail, and there being no words in the will which restrained the dying without issue to the time of the death of the legatee, the limitation over was held to be on a contingency too remote.

The rule of *partus sequitur ventrem* is universally followed unless there be something in the terms of the instrument which disposes of the mother, separating the issue from her.

The controversy in this cause arose out of the following clauses in the will of James Daniel: "I lend my wife twenty-one negroes," naming them, and also certain lands, "during her natural life." And subsequently,

"I give and bequeath unto my granddaughter, Patsy Hendrick, three negroes, viz., Joe, Parker, and Willis -- I also give her one-half of the negroes I have lent my wife, to her and her heirs forever. I give and bequeath unto my grandson, Jesse Daniel Austin, son of Betty Austin, one-half of the negroes I have lent my wife, after the death of my wife, Nancy Daniel. Now my will is that if either of my grand children, Patsy Hendrick or Jesse Daniel Austin, should die without a lawful heir of their bodies, that the other should heir its estate."

Jesse Daniel Austin (now called by special act Jesse Austin Daniel) survived Patsy Hendrick, and after the death of Nancy Daniel, the widow of the testator, took into possession all the negroes bequeathed to her during her life. Patsy Hendrick died about the year 1805, intestate and without heirs of her body, being at the time of her death an infant about nine years old, leaving Robert Hendrick, her father and Louisa Hendrick, her half sister, by the father's

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side, now Louisa Gibbes, one of the complainants, her next of kin. Robert Hendrick died in 1814, having first made his will, bequeathing his estate to the said Louisa, his daughter, and his wife Mary, now Mary Williamson, also a complainant. Some of the slaves, to-wit, Sally and her children, were born in the lifetime of Nancy Daniel.

The court below determined that the limitation over was too remote, and decreed one-half the slaves to the representatives of Patsy Hendrick, the complainants. It also decreed that the slaves, Sally and her children, did not belong to the estate of the tenant for life. The defendants appealed to this Court.

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

The first bequest to Patsy Hendrick would pass the slaves therein mentioned to her absolutely, were not this absolute estate qualified by the subsequent limitation over if either of the testator's grand children, Patsy Hendrick or Jesse Daniel Austin, should die without a lawful heir of their bodies, that the other should heir its estate. We think these words convert the absolute estate previously given into an estate tail, and if so, since slaves are personal property, the limitation over is too remote.

There are no words in the will which restrain the dying without issue to the time of the death of the legatee. The remainder over is to take effect whenever either of the immediate legatees should die without a lawful heir of his or her body. The gift in remainder is a gift to the stock, and is limited over on a contingency too remote to be allowed by the policy of the law.

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The second point is, we believe, well settled. The issue is, we believe, universally considered as following the mother unless they be separated from each other by the terms of the instrument which disposes of the mother.

Decree affirmed with costs.