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King Vs. Mitchell

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Decided On : 1843

Appeal No. : 33 U.S. 326

Appellant : King

Respondent : Mitchell

Judgement :

King v. Mitchell - 33 U.S. 326 (1843)
U.S. Supreme Court King v. Mitchell, 33 U.S. 8 Pet. 326 326 (1843)

King v. Mitchell

33 U.S. (8 Pet.) 326

APPEAL FROM THE DISTRICT

COURT OF THE UNITED STATES

SYLLABUS

William King, in his will, made the following devise:

"In case of having no children, I then leave and bequeath all my real estate, at the death of my wife to William King (the appellant), son of my brother James King, on condition of his marrying a daughter of William Trigg, and my niece Rachel his wife, lately Rachel Finlay, in trust for the eldest son or issue of said marriage, and in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trig, that will marry a child of my brother James King, or of sister Elizabeth, wife of John. Mitchell, and to their issue."

Upon the construction of the terms of this clause, it was decided by this Court in 28 U. S. 3 Pet. 346 that William King, the devisee, took the estate upon a condition subsequent, and that it vested in him (so far as not otherwise expressly disposed of by the will) immediately upon the death of the testator. William Trigg having died without ever having had any daughter born of his wife Rachel, the condition became impossible. All the children of William Trigg and Rachel his wife, and of James King and Elizabeth Mitchell, are married to other persons, and there has been no marriage between any of them by which the devise over, upon the default of marriage of William King (the devisee) with a daughter of the Triggs would take effect.

The case was again brought before the Court on an appeal by William King, in whom it had been decided the estate devised was vested in trust, and the Court held that William King did not take a beneficial estate in fee in the premises, but a resulting trust for the heirs at law of the testator.

There is no doubt that the words "in trust" in a will may be construed to create a use if the intention of the testator or the nature of the devise requires it. But the ordinary sense of the term is descriptive of a fiduciary estate or technical trust, and this sense ought to be retained until the other sense is clearly established to be that intended by the testator. In the present case, there are strong reasons for construing the words to be a technical trust. The devise looked to the issue of a person not then in being, and of course if such issue should come in esse, a long minority must follow. During this period it was an object with the testator to uphold the estate in the father for the benefit of his issue, and this could be better

accomplished by him, as a trustee than as a guardian. If the estate to the issue were a use, it would vest the legal estate in them as soon as they came in esse, and if the first born children should be daughters, it would vest, in them subject to being divested by the subsequent birth of a son. A trust estate would far better provide for first contingencies than a legal estate. There is then no reason for deflecting the words from their ordinary meaning.

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At January term 1830, the case of *Finlay v. King's Lessee* came before this Court on a writ of error to the District Court of the United States for the Western District of Virginia, 28 U. S. 3 Pet. 346. That was an action of ejectment, and the question involved and decided by this Court in it was as to the construction of the will of William King, deceased, formerly of Abingdon, Virginia. The suit was instituted against the present appellees to recover a part of the real estate of the testator, William King, which the defendants claimed as two of the co-heirs of the testator, and on which they had entered with the consent of all the co-heirs for the purpose of trying the title of the plaintiff, now appellant, as devisee under the will. In that action, judgment for the land in controversy, was given by the district court in favor of the plaintiff on a case stated.

On the removal of the case to this Court, the judgment of the district court was affirmed and the Court held that all the real estate of William King, deceased, is devised to William King, the appellant, but the possession of part of it, which is given to his wife and others, is postponed until her death. The court also proceeded to say, that

"The question whether William King took an estate which, in all the events that had happened, enures to his benefit, or whether he is, in the existing state of things, to be considered 'trustee' for the heirs of the testator, could not be decided in that case. That question belongs to a court of chancery, and will be determined when the heirs shall bring a bill to enforce the execution of the trust."

3 Pet. 28 U. S. 383 .

The appellees, as heirs at law of William King deceased, in September 1830, filed a bill in the District Court of Western Virginia against the appellant, William King, in which they alleged that the estate so devised was held by the appellant, William King, as a mere trustee, holding the beneficial interest for the testator's heirs at law, and they pray that the said William King may be compelled to execute the trust confided to him by the said will in such manner as the court may think proper; that the proceedings on the said judgment may be stayed until the case can be fully heard, and

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that a perpetual injunction may be directed, and that such other and further relief in the premises may be given as their case may require and as may be consistent with the principles of equity.

The bill also prayed for an injunction to stay proceedings on the judgment in the ejectment.

The district court gave a decree, according to the requirements of the bill, and the defendant appealed to this Court.

The case agreed in the suit at law, and upon which the questions argued before the court in this case were presented, was as follows.

"We agree that William King departed this life on 8 October, 1808, having first made and published his last will and testament, which was afterwards admitted to record in the County Court of Washington County, in Virginia, where he resided, and is in the words and figures following: "

"Meditating on the uncertainty of human life, I, William King, have thought proper to make this my last will and testament, leaving and bequeathing my worldly estate in the manner following, to-wit: to my beloved wife, Mary, in addition to her legal dower of all my estate, the dwelling house and other buildings on lot number ten in Abingdon, where I now reside, together with the garden, orchard, and that part of my Fruit Hill plantation south of the great road, and lands adjacent to Abingdon,

now rented to C. Finlay & Co., and, at my father's decease, including those in his occupancy on the north side of the great road, for her natural life."

"I also will and declare that in case my beloved wife, Mary, hath hereafter a child or children by me, that the said child or children is and are to be sole heirs of my whole estate, real and personal, excepting one-third part of specified legacies and appropriations hereinafter mentioned, which, in case of my having children, will reduce each legacy hereinafter mentioned to one-third part of the amount hereafter specified, and the disposition of the real estate, as hereafter mentioned, in that case wholly void. In case of having no children, I then leave and bequeath all my real estate at the death of my wife, to William King, son of brother James King, on condition of his marrying a daughter of William Trigg and my niece Rachel his wife, lately Rachel Finlay, in trust, for the eldest son or

issue of said marriage, and in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trigg, that will marry a child of my brother James King, or of sister Elizabeth, wife of John Mitchell, and to their issue, and during the lifetime of my wife, it is my intention and request that William Trigg, James King, and her do carry on my business in co-partnership, both salt works and merchandising, and equal shares, and that in consideration of the use of my capital, they pay out of the same the following legacies: "

"To John Mitchell, on condition of his assisting and carrying on business with them at the usual salary as formerly, *viz.,* one thousand dollars per year, for from two to five years, as they may wish his assistance, an additional sum of ten thousand dollars, payable five years after my decease, and to each of his children on coming of age one thousand dollars more than the general legacy hereafter mentioned. To Connally Finlay a like sum of ten thousand dollars payable in five years."

"To my nieces, Elizabeth Finlay and Elizabeth Mitchell (being called for my grandmother, with whom I was brought up) ten thousand dollars in twelve months after marriage, provided they are then eighteen years of age, if not, at the age of eighteen; to each of my other nephews and nieces at the age of eighteen, that is, children of my brother James, sisters Nancy and Elizabeth, one thousand dollars each; to each of the children of my brother Samuel, and half-sister Hannah, three hundred dollars each, as aforesaid; to my said sister Hannah, in two years after my decease, one thousand dollars; and to my half brother Samuel, in case of personal application to the manager at Saltville, or to my executors in Abingdon, on 1 January annually during his life, one hundred and fifty dollars; if not called for on said day, to be void for that year, and receipt to be personally given. It is my wish and request that my wife, William Trigg, and James King, or any two of them that shall concur in carrying on the business, should join with all the young men that may reside with me and be assisting me in my decease, that are worthy, or furnish them with four or five thousand dollars worth of goods, at a reasonable advance, on a credit of from three to

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five years, taking bonds with interest, from one year after supply. In case my brother James should prefer continuing partnership with Charles S. Carson, in place of closing the business of King, Carson & King as soon as legal and convenient, then my will is that William Trigg and my wife carry on the business, one-third of each for their own account, and the remaining third to be equally divided between the children of my brother James and sisters Nancy and Elizabeth. To my father Thomas King I leave, during his life the houses he now resides in and occupies, at Fruit Hill, together with that part of my land, in said tract north of the great road, that he chooses to farm, with what fruit he may want from the orchard; the spring house, being intended for a wash house, with the appurtenances, subject to the direction of my beloved wife, Mary, as also the orchard, except as aforesaid. I also leave and bequeath to my father the sum of two hundred dollars per annum during his life, and if accidentally fire should destroy his Fincastle house and buildings, a further sum of two hundred and

twenty dollars per annum, while his income from these would cease. I also leave and bequeath to the Abingdon Academy the sum of ten thousand dollars, payable to the trustees in the year one thousand eight hundred and sixteen, or lands to that amount, to be vested in said academy, with the interest or rents thereon forever."

"WILLIAM KING"

"Abingdon, Virginia, 3 March, 1806."

"I hereby appoint William Trigg, of Abingdon, and James King, of Nashville, executors of my last will and testament enclosed; written by my own hand, and signed, this 3 March, 1805."

"WILLIAM KING"

"We agree that William King, at the time of his death, was seized and possessed of seventy-six tracts of land in the said County of Washington, containing, in the whole, nineteen thousand four hundred and seventy-three acres of land, on one of which tracts is the salt works, which have, since his death, been leased for years at the annual rent of thirty thousand dollars. Also, of nineteen lots in the Town of Abingdon, in Washington County, nine of which produced an annual rent of six hundred and sixty dollars. Also, of fourteen tracts of

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land in the County of Wythe, containing three thousand four hundred and ninety-four and a half acres. Also of eighteen tracts of land in the State of Tennessee containing, in the whole, ten thousand eight hundred and eighty acres. Also of shares in town lots in several of the towns in the State of Tennessee. We also agree that the said William King survived his father, in the said will mentioned; that the said William King had brothers and sisters, to-wit, James King, a brother of the whole blood; Nancy, a sister of the whole blood, the wife of Connally Finlay, in the will mentioned; Samuel King, a brother of the half blood; Hannah, a sister of the half blood, the wife of John Allen; all of which brothers and sisters, before named survived the said William King. That another sister of the said William King of the

whole blood, died before him, and was named Elizabeth, the wife of John Mitchell, who is mentioned in the will. We agree that William King, the lessor of the plaintiff, is the same William King, the son of James King, brother of the testator, mentioned by him in the will."

"We further agree that William Trigg, in the will mentioned, departed this life on 4 August, 1813, leaving Rachel Trigg, in the will mentioned, his widow, and four sons, the said Rachel having borne them to the said William, and not having borne any daughter to him, the said William Trigg, at any time, which said sons are all living. That Mary, who was the wife of the said William King, is still living, aged forty-three years, and is now the wife of Francis Smith. We further agree that William King, the lessor of the plaintiff, is married to Sarah Behum; that James King had only one daughter, named Rachel Mary Eliza, who is now the wife of Alexander McCall, and that Elizabeth, the wife of John Mitchell, had only two daughters, to-wit, Elizabeth, who is now the wife of William Heiskell, and Polly, who is now the wife of Abraham B. Trigg. We agree that William King, the testator, died seized and possessed of the house and lot in the declaration mentioned. We agree the lease, entry, and ouster, in the declaration supposed, and that the defendants are in possession of the house and lot in the declaration mentioned. If, upon this state of facts, the lessor of the plaintiff ought to recover at this time, we agree that judgment shall be entered for him, and that if the court shall be of opinion that he

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ought not to recover until after the death of Mary, the wife of Francis Smith; or that he ought not at any time to recover, judgment shall be entered in favor of the defendants. "

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MR. JUSTICE STORY delivered the opinion of the Court.

This is an appeal from a decree of the District Court of the United States for the Western District of Virginia, in a case where the appellant was the original

defendant and the appellees the original plaintiffs in equity.

The bill was brought by the plaintiffs, as heirs at law of William King deceased, to obtain a perpetual injunction of a judgment at law upon an ejectment in which a recovery was had by the appellant of certain parcels of land which he claimed as devisee under the will of the said William King, deceased. The case in which the recovery was had came before this Court upon a special statement of facts, agreed by the parties, at January term, 1830, and will be found reported in the third volume of Peters' Reports 28 U. S. 346 . In that case, all the material facts applicable to this case are set forth, and therefore we content ourselves with a reference to it, and the real question for decision in the present suit is whether, under the will stated in that case, the present appellant took a beneficial estate in fee in the premises or an estate in trust only, which trust, in the events which have happened, has been frustrated, and there now remains a resulting trust for the heirs at law of the testator. The bill asserts that the estate was a mere estate upon a trust, which has failed, and that there is a resulting trust for the heirs at law; that they are consequently entitled to the injunction prayed for and to other relief as prayed in the bill. The decree was in favor of this construction of the will, and proceeded to grant the injunction and to decree a partition accordingly.

The main clause of the will upon which the question arises is in the following words:

"In case of having no children, I then leave and bequeath all my real estate, at the death of my wife to William King [the appellant], son of brother James King, on condition of his marrying a daughter of William Trigg and my niece Rachel his wife, lately Rachel Finlay, in trust for the eldest son or issue of said marriage, and in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trigg that will marry a child of my brother James King, or of sister Elizabeth, wife of John Mitchell, and to their issue."

Upon the construction of the

terms of this clause, it has been already decided by this Court in 28 U. S. 3 Pet. 346 that William King, the devisee, took the estate upon a condition subsequent, and that it vested in him (so far as not otherwise expressly disposed of by the will) immediately upon the death of the testator. William Trigg having died without ever having had any daughter born of his wife Rachel, the condition became impossible. All the children of William Trigg and Rachel his wife and of James King and Elizabeth Mitchell are married to other persons, and there has been no marriage between any of them by which the devise over, upon the default of marriage of William King (the devisee) with a daughter of the Triggs, could take effect. So that the question what estate William King took under the devise, whether a beneficial estate co-extensive with the fee or in trust, necessarily arises, for no rule of law is better settled than that where lands are devised in trust for objects incapable of taking, there is a resulting trust for the heirs at law. The only difficulty is in the application of the will to particular cases, and to ascertain whether (as Lord Eldon expressed it in *King v. Denison,* 1 Ves. & B. 260, 272) the devisee takes subject to a particular trust or whether he takes it for a particular trust.

In consulting the language of this clause, it is difficult to perceive any clear intention that William King is to take, under any circumstances, a beneficial interest in fee. He is nowhere alluded to in the will as the primary object of the testator's bounty, or as, in any peculiar sense, a favored devisee. The object of the testator seems to have been to keep his great estate together, and to pass the inheritance to someone who should unite in himself the blood of his own family and that of his wife, and thus become the common representative of both. He does not seem to have contemplated any improbability, much less any impossibility in such an event, and therefore he has made no provision for the failure of offspring from such a union. Now looking to the state of the families at the time when the will was made, is there anything unnatural in his expectations or extraordinary in his omission to provide for events apparently so remote and speculative? We must construe the will, then, according to its terms, and to events within the

contemplation of the

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testator, and not interpose limitations by conjecture, which he might have interposed, if he could have foreseen, what is now certain, the failure of the first objects of his bounty.

He gives to William King all his real estate, on condition of his marrying a daughter of William Trigg and his niece Rachel Trigg. And if the language had stopped here, there could be no doubt that a beneficial interest in fee could have been perfected in him upon his compliance with the condition or upon its becoming impossible. But the implication of such beneficial estate is repelled by the succeeding words. It is devised to him, not absolutely upon fulfillment of the condition, but "in trust for the eldest son or issue of said marriage." It is manifest, then, that the estate was not contemplated to vest in William King beneficially, for a trust coextensive with the fee is given to his issue. And it is (as was remarked by THE CHIEF JUSTICE in delivering the opinion of the court in the former case, in 28 U. S. 3 Pet. 346) quite consistent with the general intention of the testator and his mode of thinking as manifested in his will to suppose an intention that in the meantime, the profits should accumulate for the benefit of the issue, for whom the estate was designed. It is as clear that in the event that the marriage should not take effect, the beneficial estate was not intended to remain with William King. The will goes on to provide for that contingency, and declares that in case such marriage shall not take effect, the estate shall go to any child, giving preference to age, of William and Rachel Trigg, that will marry a child of his brother James or his sister Elizabeth. So that in the only alternative event contemplated by him, he strips the devisee of the beneficial estate in favor of another branch of the families, uniting the blood of both by an intermarriage. It is no objection that this devise over may be too remote to be valid in point of law. Upon that we give no opinion. It is sufficient for us that no such objection was contemplated by the testator, and so far as his intention is expressed, it is coupled with a beneficial interest for others, excluding that of William King. To create such interest in the latter, we must supply an intention, and not construe the language of the testator. We must conjecture

what he would have done, and not merely decide what he has done.

It is said that William King was a favorite nephew, and

therefore an intention to vest a beneficial estate in him ought to be implied. But how does that appear in a form so imposing as to justify such a conclusion? There is, it is true, no legacy given to him by the will, and therefore it is suggested that it could not have been the intention of the testator to clothe him with a barren trust. But a man -- to whose issue, in events within the immediate contemplation of the testator, a splendid fortune was to pass, and in whom, in the meantime, the estate was to vest for the benefit of those who must necessarily be most near as well as most dear to him, the objects of all his affections and all his anxieties -- could hardly be deemed without some adequate equivalent for his labors in a trust which was to center in him for the benefit of his offspring. And if no marriage should take place which could bring such issue into existence, the subsequent devise over demonstrates that William King was not even then first in the thoughts of the testator, but the future offspring of his relations, doubly connected by the blood of both families. They were second in preference only to the issue of William King by a Trigg, and certainly not to King himself. It has been asked what would have been the result if King had married a Trigg, and had had no issue by her? The answer is that the will does not look to such an event, and as the estate was not beneficially to vest in King in the case of a marriage and issue, it is quite too much to infer that in all other events, the beneficial estate was to vest in him simply because it is not declared to be in another. But it would be sufficient to say that no such marriage did take effect, and upon the nonoccurrence of that contingency, the estate was to pass over to other persons by the very terms of the will, thus repelling the notion that King was to take a beneficial estate where there was neither marriage nor issue.

The argument on the part of the appellant is that the immediate devise was a beneficial estate in fee to William King, with an executory devise over to the issue of his marriage with a Trigg, if there should be any, and as that event has not

happened, the prior estate to him has never been divested. But we do not think that this is the natural reading of the words, and the construction is repelled by the devise over on the failure of that marriage. In order to arrive at such a conclusion,

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we should be obliged to add words not found in the will nor implied in the context. William King is to take a fee in trust for the issue, and the trust is engrafted upon his estate, and is nowhere said in a given event to displace or supersede it. It is not a devise to him for his own use in fee, until he shall have issue, and then his use to cease and a trust to arise for such issue.

It is also insisted that the words "in trust," used in the devise, ought not to be considered as creating a mere fiduciary estate for the issue (if any), but as a legal use, to spring up by way of executory devise, and that if, by reason of the failure of such use, there is a resulting estate to the heirs at law, it is a legal use, for which their remedy is at law, and not a fiduciary estate for them for which the present remedy lies in equity. There is no doubt, that the words "in trust" in a will may be construed to create a use if the intention of the testator or the nature of the devise requires it. But the ordinary sense of the term is descriptive of a fiduciary estate or technical trust, and this sense ought to be retained until the other sense is clearly established to be that intended by the testator. Now we think that in the present case there are strong reasons for construing the words to be a technical trust. The devise looked to the issue of a person not then in being, and of course if such issue should come *in esse,* a long minority must follow. During this period, it was an object with the testator to uphold the estate in the father for the benefit of his issue, and this could be better accomplished by him as a trustee than as a mere guardian. If the estate to the issue were a use, it would vest the legal estate in them as soon as they came *in esse,* and if the first-born children should be daughters, it would vest in them subject to being divested by the subsequent birth of a son. A trust estate would far better provide for first contingencies than a legal estate. There is then no reason for deflecting the words from their ordinary meaning.

In cases of this sort, little aid can be gathered from the authorities, as there rarely are such coincidences in the language of wills and the circumstances of the cases as to lead unequivocally to the same conclusion. We have examined the authorities, however, and they do not seem to us in any

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degree to interfere with the opinion which we entertain on the present devise. Indeed some of the cases strengthen the reasoning on which we rely. But a critical examination of them would occupy too much time. Our opinion, then, is that the estate given to William King of the devise in question is not a beneficial estate in fee, but an estate in trust for his issue, and that the trust having failed, there remains a resulting trust to the heirs at law of the testator if the devise over does not take effect.

The devise over has not as yet taken effect. There is no person who now answers the description contemplated in that devise. No child of the Triggs has as yet married a child of James King or of Elizabeth Mitchell, and in the present state of things, such a marriage is impossible. Whether the contingency on which this devise over was to take effect was or was not originally too remote to be good in point of law, because a marriage might take place between a child of the Triggs then unborn and a child of James King or Elizabeth Mitchell, at a period more remote than twenty-one years after their respective births, and yet fall within the terms of the devise, is a question upon which (as we have already said) the Court will express no opinion. It does, however, create some embarrassment in the case. And the question is whether, until such event as the contemplated marriage shall happen, the heirs are not entitled to the relief they seek as a resulting trust which is at present vested in them and which can only be displaced (if at all) by the actual occurrence of a marriage which shall take place upon a future contingency. We think that they are entitled to the relief, leaving the case open for the rights of any person who may hereafter rightfully claim title against them under the devise over.

The decree of the district court is therefore

Affirmed with costs and the cause is remanded for further proceedings.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Virginia, and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed by this Court that the decree of the said district court in this

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cause be, and the same is hereby affirmed with costs. And it is further ordered and decreed by this Court that this cause be and the same is hereby remanded to the said district court with directions that further proceedings be had therein according to law and justice and in conformity to the opinion of this Court.

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