

Bosley Vs. Bosley's Executrix

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Court : US Supreme Court

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Appeal No. : 55 U.S. 390

Appellant : Bosley

Respondent : Bosley's Executrix

Judgement :

Bosley v. Bosley's Executrix - 55 U.S. 390 (1852)

U.S. Supreme Court Bosley v. Bosley's Executrix, 55 U.S. 14 How. 390 390 (1852)

Bosley v. Bosley's Executrix

55 U.S. (14 How.) 390

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FROM THE DISTRICT OF MARYLAND

SYLLABUS

James Bosley, in his will, after sundry specific devises and bequests, devised and bequeathed all his lands and other real estate in Baltimore, Cecil, and Alleghany Counties, in Maryland, and also in Florida, and his house and lot in Santa Croix,

and all the real estate he might have elsewhere, to his wife Elizabeth, her heirs and assigns, in trust to sell the same and divide the net proceeds thereof, with all the residue of his estate, equally between herself and the children of his brother.

After making his will, he sold all of the lands, particularly mentioned in the residuary clause of the will above stated, except some lands lying in Baltimore County. At the time of making the codicil hereafter mentioned, he held some of the proceeds of these sales in bonds and other securities, and with the residue had purchased other property.

He afterwards made a codicil by which he devised his summer residence in Baltimore County to his wife, and also the securities he held for the lands sold in Cecil County, and directed all the property he had acquired after the date of his will to be sold and the proceeds to be equally divided between his wife and her sister Margaret. Then followed a residuary clause in the following words:

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"Lastly, my pew in St. Paul's Church and all my other property, real or personal, and all money in bank belonging to me at the time of my decease I give, devise and bequeath unto my said wife Elizabeth and her heirs forever, and I ratify and confirm my said last will in everything except where the same is hereby revoked and altered as aforesaid."

The residuary clause in this codicil is inconsistent with that in the will, and consequently revokes it. But the devise of the property specifically mentioned in the will is not revoked by the clause in the codicil.

After the execution of the codicil, the testator agreed to lease some land for the term of ninety-nine years, renewable forever, a ground rent being reserved upon the same. The lessee was to pay cash for a part, and the residue of the purchase money was to remain on interest, as ground rent, which the lessee could extinguish at any time by the payment of the principal sum.

This property was a part of that which was specifically mentioned in the will, and not revoked by the clause in the codicil.

But the conduct of the testator in making this agreement so altered the condition of the property that it amounted to a revocation of the devise, and manifests an intention on his part, when taken in connection with other circumstances of the case, to give it to his wife under the residuary clause in the codicil.

The bill was filed by the plaintiffs in error, who were the children of Dr. John Bosley, mentioned in the will of James Bosley.

That part of the will which gave occasion to the controversy is stated in the opinion, as are also the material facts in the case.

The circuit court decided that the residuary devise in the will was revoked by the residuary clause in the codicil; that the devise of the property, specifically mentioned in the will, was not revoked by the clause in the codicil, and ordered an account to be taken of such part as remained subject to the trust, one-half of the proceeds whereof to be paid over to the complainants, and that the testator's agreement, made after the date of the will and the codicil, to lease a part of that real estate for a term of ninety-nine years, the principal sum payable at the option of the lessee, operated to revoke the devise as to that part.

From this decree, the complainants appealed to this Court.

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

The dispute in this case arises out of the will and codicil of James Bosley, late of the City of Baltimore. The will was executed in 1828, and the codicil in 1839. He died in December, 1843.

In his will, after sundry specific devises and bequests, he devised and bequeathed all his lands and other real estate in Baltimore, Cecil, and Alleghany Counties, in

Maryland, and also in Florida, and his house and lot in Santa Croix, and all the real estate he might have elsewhere, to his wife Elizabeth N. Bosley, her heirs and assigns, in trust to sell the same to the best advantage, and directed the net proceeds, together with all the residue of his estate, real, personal, and mixed, not therein before devised, to be equally divided -- one-half to his wife and the other to the children of his brother, Dr. John Bosley. After making his will and previous to the codicil, he sold all of the lands particularly mentioned in the residuary clause of the will above stated except some lands lying in Baltimore County, and except also his Florida land and part of that in Alleghany County, of which it seems he had been unable to obtain possession. And at the time of making the codicil, he held some of the proceeds of these sales in bonds and other securities, and with the residue had purchased other property.

By the codicil, he devised his summer residence, situated in

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Baltimore County, to his wife, and also the securities he held for the lands sold in Cecil County, and directed all the property he had acquired after the date of his will to be sold, and the proceeds to be equally divided between his wife and her sister, Margaret E. Noel. Then follows a residuary clause in the following words:

"Lastly, my pew in St. Paul's Church, and all my other property, real or personal, and all money in bank belonging to me at the time of my decease, I give, devise and bequeath unto my said wife Elizabeth N. Bosley, and her heirs forever, and I ratify and confirm my said last will in everything except where the same is hereby revoked and altered as aforesaid."

Upon this will and codicil, the appellants, who are the children of Dr. John Bosley, claim the one-half of this personal property left by the testator at his death and also one-half of the lands not specifically devised, upon the ground that the residuary clause in the will is not revoked by that in the codicil.

This claim is altogether untenable. The residuary clause in the codicil is inconsistent with that in the will, and consequently revokes it.

There is another claim, however, which presents a question of more difficulty.

It appears that at the time of making his will, the testator held, in fee simple, fifty acres of land in Baltimore County, and that in 1842, after the execution of the codicil, he entered into a contract with a certain Horatio G. Armstrong whereby he covenanted that, in consideration of the payment of two thousand dollars at the times specified in the agreement and the annual ground rent of two hundred and ten dollars, payable semiannually, he would lease the said land to Armstrong, his executors, administrators, and assigns, for ninety-nine years, renewable forever, with the right to the said Armstrong to extinguish the ground rent upon the payment of three thousand five hundred dollars at any time to the said James Bosley, his heirs and assigns. The testator died before the cash payments were made, and the money was afterwards received by his widow, and the lease executed by her according to the terms of the covenant.

As this was a part of the land in Baltimore County, and was therefore specifically devised in the residuary clause of the will, it was not revoked by the general devise of the residue of his real and personal property in the codicil. The question, therefore, is whether the contract with Armstrong was an implied revocation of the devise in the will.

The adjudged cases upon implied revocations are collected together in 4 Kent's Com. 528, and the rule he deduces from

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them is this,

"that the same interest which the testator had when he made his will should continue to be the same interest, and remain unaltered to his death, and that the least alteration in that interest is a revocation."

A valid agreement or covenant to convey, which equity will specifically enforce, will operate in equity as a revocation of a previous devise of the land. *Walton v. Walton*, 7 Johns.Ch. 258.

In the case before us, the interest which the testator had in this land at the time of making his will was converted into money by his contract with Armstrong. It was a sale and an agreement to convey his whole interest in the land. It is therefore unlike the case of a lease for years, or of ninety-nine years renewable forever, in which the lessor retains the reversion -- and does not bind himself to convey it on any terms to the lessee.

The form of the contract adopted in this instance, between the testator and Armstrong, is in familiar use in the sale of lots in the City of Baltimore and the adjacent country. It has nearly if not altogether superseded the old forms of contract where the vendor conveyed the lands and took a mortgage to secure the payment of the purchase money -- or gave his bond for the conveyance and retained the legal title in himself until the purchase money was paid. And it has taken the place of these forms of contract, because it is far more convenient both to the seller and the purchaser. For it enables the vendee to postpone the payment of a large portion of the purchase money until he finds it entirely convenient to pay it, and at the same time it is more advantageous to the vendor, as it gives him a better security for the punctual payment of the interest, and while an extended credit is given to the vendee, it is to the vendor a sale for cash. For if his ground rent is well secured, he can at any time sell it in the market, for the balance of the purchase money left in the hands of the vendee. It will be observed that the rent reserved is precisely the interest on the amount of the purchase money remaining unpaid. And when it must be admitted that a sale in which a bond of conveyance is given, and the title retained by the vendor, to secure the payment of the purchase money, is in equity a revocation, there would seem to be no good reason for holding otherwise in the case before us, where the vendor is equally bound to convey when the whole purchase money is paid. A distinction between the cases would rest on a difference in form rather than of substance and principle. It would moreover make the revocation depend upon the will of a stranger, and not upon that of the testator. For if Armstrong had paid to him in his lifetime, the whole amount of the purchase money, as he had a right to do under the

contract, it is very clear that the devise would then have been revoked. And if the purchaser's omission to pay prevents the contract from being a revocation, the validity of the devise is made to depend, not upon the will or the act of a testator, but that of a stranger, over which the testator has no control. We think a distinction leading to that result cannot be maintained, and that the devise in question was revoked by the contract with Armstrong.

The counsel for the appellants, however, contends, that if the will is revoked, and the land converted into money, yet there was a legal reversionary interest remaining in him, and that the rent reserved, being incident to the reversion and pertaining to the realty, cannot pass under a bequest of money or personal estate.

But it must be remembered that the residuary clause in the codicil gives to his wife all his real as well as personal property, not otherwise disposed of, and therefore is broad enough to embrace the interest in question, although, in contemplation of law, it belongs to the realty.

We do not mean to say that every residuary clause in a codicil will pass land specifically devised in a will, where, by some act of the testator, the devise is impliedly revoked after the codicil was executed. There are adjudged cases upon certain wills where it has been held otherwise. But whether the property passes to the devisee or descends to the heir, as in a case of intestacy, must depend upon the intention of the testator, to be gathered from the will and codicil. It is always necessarily a question of intention. No two wills, probably, were ever written in precisely the same language throughout, nor any two testators die under the same circumstances in relation to their estate, family, and friends. And it would be very unsafe as well as unjust to expound the will of one man by the construction which a court of justice had given to that of another merely because similar words were used in particular parts of it.

Undoubtedly there are fixed rules of law in relation to the construction of certain words and phrases in a will which have been established by a long course of

judicial decisions, and which have become landmarks of property, and cannot therefore be disturbed. But in most of the cases in which they have been applied, it is to be feared that they have not accomplished, but defeated, the testator's intentions.

They owe their origin to the principles of the feudal system, which always favored the heir at law because it was its policy to perpetuate large estates in the same family. And acting upon this principle, the English courts of justice have in some instances placed the narrowest possible construction on the

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words of a will. And a testator sometimes being held to die intestate as to portions of his property and left it to descend to his heir when a fair and reasonable interpretation, according to the ordinary acceptation of the words used, plainly showed that the whole estate was intended to be devised to another.

It has not been the disposition of courts of justice in modern times to extend the application of these rigid technical rules, but rather to carry out the intention of the testator when no fixed rule of legal interpretation stands in the way. And this is and ought to be more especially the case in this country. For wills here are most frequently drawn by persons unacquainted with legal phraseology and ignorant of the meaning which the law attaches to the words they use. The property devised is perhaps, in the greater number of cases, the fruits of the testator's own industry. And the policy and institutions of the country are adverse to the feudal policy of favoring the heir at the expense of the devisee and of construing, for that purpose, the words of the will in their most restricted sense, although that construction obviously defeats the intention of the testator.

But the question arising upon this will and codicil does not depend upon any word or phrase to which the law has affixed a certain and definite meaning. The words used are legally sufficient to pass the property to his widow, and the only question is was that his intention as we gather it from the will and codicil, considered together? We think it was.

Eleven years elapsed between the date of the will and that of the codicil. The situation of the testator's property had undergone considerable changes during that time, and his mind also had materially changed as to the manner of disposing of it. The lands mentioned in the residuary clause of his will had, with a very small exception, been sold. And the property he purchased with the proceeds of these sales or otherwise acquired after the date of the will was devised by the codicil to his wife and her sister, and not, as before, divided between his wife and his brother's children, and the whole of his personal estate is given exclusively to his wife, instead of the one-half only bequeathed in the will. The land which has given rise to this controversy was also sold by the testator in his lifetime, and two thousand dollars of the purchase money had become personalty and as such unquestionably passed to the wife by the residuary clause in the codicil. The testator's remaining interest in this property was also money, and not land, but by reason of the form in which he contracted to sell it, this portion of the money belonged to the realty. It is impossible to suppose, after looking at these bequests to his wife, that he meant to die intestate of this money and to divide this small portion

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of his estate in two parts, giving her the two thousand dollars but withholding from her the residue and leaving it to be claimed by whoever might chance to be his heir at law at the time of his death. On the contrary, it is manifest from the whole context of the will and codicil that he did not mean to die intestate of any portion of his property, and that what did not pass to others by a specific devise or bequest should go to his wife. The codicil is evidently drawn by unskillful hands, and therefore, according to settled principles of law, must receive a fair and liberal interpretation to accomplish the intent. And as that intent is apparent in favor of the widow, it ought not to be defeated by a narrow and technical construction of particular words.

It was suggested in the argument that the appellants might be entitled to a remainder in fee in the two lots on which, it would seem from the will and the codicil, that two old servants of the testator were living. But this point very properly

was not pressed. For the lots mentioned in that clause of the will in which a remainder in fee is given to the appellants after the death of Mrs. Bosley are lots on which there were improvements and which yielded an income. The lots in question were not of that description. They yielded no income, and consequently are not embraced in that devise.

Upon the whole, therefore, we think the decree of the circuit court was right, and must be

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maryland and was argued by counsel. On consideration whereof it is now here ordered adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

Dissenting, MR. JUSTICE GRIER.