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Wilkins Vs. Allen

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SooperKanoon Citation : sooperkanoon.com/80603

Court : US Supreme Court

Decided On : 1855

Appeal No. : 59 U.S. 385

Appellant : Wilkins

Respondent : Allen

Judgement :

Wilkins v. Allen - 59 U.S. 385 (1855)
U.S. Supreme Court Wilkins v. Allen, 59 U.S. 18 How. 385 385 (1855)

Wilkins v. Allen

59 U.S. (18 How.) 385

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

Where a testator in Pennsylvania gave to his wife a life estate in the homestead and two lots, and charged upon his goods and lands an annuity to her, but did not mention his lands in any other part of the will, and then, after sundry legacies,

bequeathed the surplus to be applied to the purposes of the Presbyterian church, this surplus does not relate to his lands, which his heirs will take.

By the law of Pennsylvania, heirs must take, unless they are disinherited by express words or necessary implication.

Evidence of extrinsic circumstances, such as the amount and condition of the estate &c.;, cannot be received to control the interpretation of the will; it is only admissible to explain ambiguities arising out of extrinsic circumstances.

This was an ejectment brought by the Allens, who were aliens and subjects of the Queen of Great Britain and Ireland, to recover four undivided fifth parts of one undivided half of a lot in Pittsburg. They were heirs of Michael Allen and the question was whether Allen the testator, had devised the property in question by his will.

Page 59 U. S. 387

The substance of the will is given in the opinion of the Court, as are also the rulings of the circuit court.

Page 59 U. S. 390

MR. JUSTICE CATRON delivered the opinion of the Court.

Michael Allen of the City of Pittsburgh, made his will in 1849, by which he bequeathed to his wife, for life, his dwelling house in said city, with two lots of ground occupied by him and her as a garden. He also gave her the household furniture and library. "And still furthermore," he declares,

"that, first and foremost, there shall be secured to my dear wife, on my real and personal estate, an annuity of twelve hundred dollars a year, to be punctually paid semiannually during her lifetime, and that my executors pay all the taxes on the premises occupied by my dear wife during her lifetime."

The testator then bequeaths:

1st. To the five children of Dr. Robert Wray, five hundred dollars each.

2d. To the managers of the orphan asylums of the cities of Pittsburg and Alleghany, two thousand dollars each.

3d. To the pastor and sessions of the First Presbyterian Church, two thousand dollars.

4th. To the General Assembly of the Presbyterian church, ten thousand dollars.

5th. To the trustees of the board of sessions of said general assembly, four thousand dollars.

6th. To the Foreign Evangelical Society, located in New York, three thousand dollars.

7th, 8th, and 9th, he gave for the use of the Presbyterian church, eleven thousand dollars.

10th. To the American Bible Society, six thousand dollars.

11th. To the American Tract Society, four thousand dollars.

12th. For the use of the Sunday School Union, situate in Philadelphia, four thousand dollars.

He next declares:

"As to my debts, they will amount to very little, but and after paying all claims and bequests, there will remain a considerable surplus, which I give and bequeath in trust to my executors, be the same more or less, to be applied to the religious and benevolent purposes of the several institutions of the General Assembly of the Presbyterian church in the United States of America, as before mentioned,"

and then constitutes and appoints his executors who are the plaintiffs in error to carry out the provisions of the will.

The defendants in error are the heirs at law of Michael Allen. They sued his executors in ejectment to recover a portion of the lands situate in the City of Pittsburgh of which he died seised, insisting that the lands did not pass by the will.

The residuary clause was supposed to be of doubtful meaning and obscure. To remove the alleged obscurity, the defendants below offered to prove on the trial

"from memoranda made by the testator at the time of the execution of said last

will and testament and upon the basis of which the same was prepared by him, and also by declarations made by him at and about the same time, what was his real meaning in the employment of the word 'surplus' in the residuary clause of said will, and that the same was intended to comprehend his whole remaining estate, as well real as personal."

"And further, to show by other evidence, besides the said memoranda, the actual amount and condition of the personal estate at the time of the execution of the said last will and testament, as well as at the period of the testator's death, and that the same was entirely insufficient, at either of the said periods, to pay the specific and pecuniary legacies provided therein, and this for the purpose of explaining the meaning of the testator in the said residuary clause, and the employment of the said word 'surplus' therein, by showing that if the same did not embrace the real estate, the said residuary clause would be entirely inoperative for the reason that there was in point of fact, under such construction, at neither of said periods any surplus whatever, as supposed and declared by the testator himself."

On motion of the plaintiffs, the court rejected the evidence and instructed the jury that no title vested in the executors by the residuary clause.

On this state of facts, the first question presented for our consideration is whether the terms of the will are sufficient in themselves, when interpreted by their context, to carry the real estate to the executors.

As in this instance, the testator's language must be construed with reference to the laws and policy of the country of his domicile, it is our duty to ascertain what the laws and policy of Pennsylvania are so far as they may have a controlling influence in the construction of this will.

In the first place, Pennsylvania has only so far altered the English common law as to substitute all the children for the sole heir, carrying out this rule of descent though the collateral branches. This is the will the law makes in case of intestacy, and is the policy of the state. Under the law, the heirs must take unless they are "disinherited by express words or necessary implication." "Conjecture, nor uncertainty, shall never disinherit him." Such was the ground assumed by counsel in the case of *Clayton v. Clayton,* 3 Binney 481, and which assumption was sustained by the court; *ib.* 486. Chief Justice Tilghman says:

"The rule of law gives the estate to the heir unless the will takes it from him, and in order to take it from him it must give it to some other person. Thus we are brought back to the question are here any words in the will sufficient to convey more than an estate for life to the devisees. I can find none. "

Page 59 U. S. 392

In the case referred to, the testator devised a homestead to his niece, Sarah Evans, and her children without adding the word "heirs." That he intended to give an estate in fee was hardly open to controversy, but the words of the will did not carry the fee, and the court refused to follow a doubtful intention. It there came fairly up to the rule laid down in the English case of *Mudge v. Blight et ux.,* Cowp. 355, that

"Where there are no words of limitation, the court must determine in the case of a devise affecting real estate that the devisee has only an estate for life, because the principle is fully settled and established, and no conjecture of a private

imagination can shake a rule of law. If the intention of the testator is doubtful, the rule of law must take place, and so if the court cannot find words in the will sufficient to carry a fee. Though they should themselves be satisfied beyond the possibility of a doubt as to what the intention of the party was, they must adhere to the rule of law."

This decision was made in 1811, and the principles then laid down have since been adhered to with uncommon care and strictness.

In speaking of expressions in a will necessary to disinherit the heir, Chief Justice Gibson, in delivering the opinion of the court in the case of *Bradford v. Bradford,* 6 Wharton 244, says:

"The intention must be manifest and rest on something more certain than conjecture. The court must proceed on known principles and established rules, not on loose conjectural interpretations nor considering what a man may be imagined to do in the testator's circumstances. The principle is applicable in all its force in a case like the present, in which the question goes to the birthright of those who, standing in place of the common law heir, are not to be disinherited except by express devise, or, as is said in 1 Powell on Devises 199, by implication so inevitable that an intention to the contrary cannot be supposed."

It is there admitted that when the testator provided that "all his worldly goods of all sorts and kinds" should be vested in trust and held as one fund for a hundred years, and his children and their descendants should receive the rents and profits, that he most probably intended to include his lands. This, however, the court declares, is no more than a confident conjecture, and that it must come at last to an analysis of the testator's language to ascertain the legal meaning of the will.

Now testing the will before us by these rules, and where can any provision be found in it showing a plain intention to disinherit the heirs? The lands are never named except where the wife is given a life estate in the homestead, and two lots, and, secondly, where her annuity of twelve hundred dollars is imposed on the goods and lands as a charge.

But as the residuary clause is mainly relied on as carrying the real estate to the executors, it is proper that some further notice should be taken of its import. The testator declared that his debts amounted to very little, and that, after paying all claims and bequests, there would remain a considerable surplus, and this he bequeathed to his executors, to be applied to religious and benevolent purposes. He did not indicate any new fund, nor a surplus arising from the sale of lands, in the concluding clause of the will more than in any previous clause, where he provided for the support of the Presbyterian church.

The terms of the will, *proprio vigore,* being insufficient to disinherit the heirs, the next question is whether the interpretation thereof may not be aided by extrinsic circumstances -- namely memoranda, declaration, and the actual amount and condition of the estate as offered to be shown by the defendants below.

That the court may put itself in the place of the testator by looking into the state of his property and the circumstances by which he was surrounded when he made the will is not only true as a general proposition, but without such information it must often happen that the will could not be sensibly construed. Wigram (10, 60) lays down the rule with much distinctness. Such evidence, however, is only admissible to explain ambiguities arising out of extrinsic circumstances, as to persons provided for, objects of disposition, and the like. For instance, if the testator gave to his grandson, J. S., a plantation, and he had two grandsons of that name; or he devised his son J. his plantation on a certain river, and he had two plantations there -- in each case proof might be heard to show the person or thing intended. But evidence cannot be heard to show a different intention in the testator from that which the will discloses.

Such is the established doctrine of this Court, as was held in the case of *Weatherhead v. Barksdale,* 11 How. 357.

The only English case we will refer to is that of *Miller v. Traverse,* 8 Bingh. 248. There the testator devised and vested in trust "all his freehold and real estates

whatsoever in the County of Limerick, and the City of Limerick." At the time of making the will, he had no real estate in the County of Limerick, but had a small estate in the City of Limerick and considerable real estate in the County of Clare, and the question was whether the devisees could be admitted to have an issue and trial at law on the ground that they offered to prove that by the original draft of the will, the estates in Clare were included and the county left out by oversight or mistake, and also that the testator so expressed himself.

The lord chancellor was assisted by the chief justice of the common pleas and the chief baron, and they all concurred in

Page 59 U. S. 394

holding that the evidence offered could not be heard to change the import of the will, and refused the issue. And so it is manifest here that if the evidence were to show all that is assumed for it, yet it could not be heard to affect this will.

It is ordered that the judgment of the circuit court be affirmed.

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