

King Vs. Ackerman

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Court : US Supreme Court

Decided On : 1862

Appeal No. : 67 U.S. 408

Appellant : King

Respondent : Ackerman

Judgement :

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King v. Ackerman

67 U.S. (2 Black) 408

ERROR TO THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. It is an established rule of the common law that a devise of lands without words of limitation confers an estate for life only.

2. But because this rule generally defeated the intention of the testator, the Courts have been astute in finding exceptions to it.
3. Where land is devised without legal words of limitation, and a provision is added that the devisee may do therewith as he pleases, a fee is presumed to have been intended.
4. It is also well settled that where a devisee whose estate is not defined is directed to pay debts, legacies, or a sum in gross, he takes a fee.
5. This last rule, though founded on inference, is as technical and rigid in its application as that to which it is an exception, for courts will not inquire into the relative value of the land and the charge nor decide on the probability of the devisee being called on to pay the charge.
6. Where a testator gives one piece of land to his son with the privilege of doing therewith as he pleases, and makes another devise to the same son, without using those or any similar words, it does not follow that there was no actual intent to give a fee in the last-mentioned land.
7. A court may look beyond the face of the will to explain an ambiguity as to the person or property to which it applies, but never for the purpose of enlarging or diminishing the estate devised.

This case came up on a writ of error to the Circuit Court for the Southern District of New York. It was an ejectment for certain lots now within the limits of the city and formerly part of the estate of Lawrence Benson, deceased.

Lawrence Benson, at the time of his death, had two tracts of land, which he held in fee, one occupied by himself and one by George Williams. He had one son and two grand-daughters, the children of a deceased daughter. He died in 1822, having

made the will copied in the opinion of the Court, by which he gave the Williams' place to his son Benjamin, "to do and dispose of as he may think proper," and the homestead, without words of limitation, charging the devisee with the payment of \$1,500, to his grand-children. The lots in controversy were part of the homestead. The plaintiff, after the death of Benjamin Benson, claimed an interest therein as one of the heirs-at-law of Lawrence Benson. The defendant asserted his right under conveyances made by Benjamin Benson in his lifetime. The question was whether the will gave Benjamin a fee in the homestead or only a life estate.

On the trial before the circuit court, the plaintiff offered evidence to show that the Williams' place, at the date of the will and ever afterwards, was worth greatly more than the sum charged upon the devisee in favor of the testator's grandchildren. This evidence was rejected, and Mr. Justice Nelson held that, by the legal and true construction of the will, Benjamin Benson took a fee in both places. Whereupon the plaintiff sued out this writ of error.

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MR. JUSTICE GRIER.

It has been an established rule in the construction of wills that a devise of lands, without words of limitation confers on the devisee an estate for life only. This rule was founded rather on policy than on reason, for while it favored the heir-at-law, it generally defeated the intention of the testator. This is acknowledged by Lord Mansfield in *Loveacre v. Blight*, Cowper, and the interference of modern legislation to abolish the rule and establish a contrary one is evidence of the correctness of his remark. This change has been effected by statute in England and most if not all of the states of this Union.

The will now presented for our consideration was made before this obnoxious rule was repealed in New York, and we are compelled to examine its provisions fettered by this technical, artificial, and now nearly obsolete rule of construction. Courts have always been astute in searching for some equivalent

popular phrase or some provision of the will incompatible with such imputed intention to rescue it from the effect of this rule. Thus, when a testator devises land without legal words of limitation, but adds that the devisee "may sell or do therewith as he pleases," he is presumed to have intended to give a fee, because such a power would be incompatible with a less estate. It is a long settled rule also that where a devisee whose estate is undefined is directed to pay the testator's debts or legacies or a specific sum in gross, he takes an estate in fee. The reason on which this rule is founded is that if the devisee took a less estate, he might be damnified by the determination of his interest before reimbursement of his expenditure. This rule, though founded on inference or implication, is nevertheless as technical and rigid in its application as that to which it is an exception, for the court will not inquire into the relative value of the land and the charge, or, if the charge be contingent, will not weigh probabilities as to whether the devisee will ever be called on to pay it. The intention of the testator as to the limitations of an estate devised can be judged and decided only from his own language as contained within the "four corners" of his will. Parol evidence cannot be received to show that such inference was not founded on probability, or that this rule of construction ought not to apply under certain circumstances. This would in effect be delivering the power and duty of construing the will to a jury.

The will of Lawrence Benson is very brief and is as follows:

" *In the first place*, I give and bequeath unto my son, Benjamin L. Benson, all that estate now occupied by George Williams, to do and dispose of as he may think proper."

"I also give and bequeath unto my son, Benjamin L. Benson, the homestead where I now live, situated on Harlem River."

" *Secondly*. My will and intention is that my son, Benjamin L. Benson, do give unto my grandchildren, after the decease of my wife, the sum of \$1,500."

" *Thirdly*. The income of these legacies, and also of my estate, real and personal, I give unto my loving wife, Maria Benson,

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during her widowhood, to do and dispose of as she may think proper."

It is plain that this instrument has been written by a person "*inops concilii*" and wholly ignorant of proper legal phraseology.

He uses the term "bequeath" instead of "*devise*" in the gift of his real estate.

By the first clause, he gives his two pieces of real estate to his son Benjamin, who appears to be the chief object of his bounty.

By the second, he charges the sum of \$1,500 on Benjamin to be paid to the grandchildren of testator.

By the third, he gives to his wife a life estate on all of his estate, real and personal, to be forfeited if she marry again.

Now we must observe

1st. That the son has clearly but an estate in remainder in the lands devised to him.

2d. That it is a vested remainder.

3d. That this testator not only postpones the possession and enjoyment of the land devised to his son for an indefinite time, but charges him with the payment of a gross sum of money, which he will be personally liable to pay, for land which he may never personally possess or enjoy.

If the charge is sufficient in law to give the devisee an estate in fee by implication or presumption, how much stronger is this presumption when his enjoyment of it is indefinitely postponed.

But it is contended that because the testator has used the phrase "*to do and dispose of as he may think proper*" as regards the Williams' farm, and in the devise of the homestead has omitted it, such omission as to the latter is equivalent to an express limitation of it to the life of the devisee, and that the court ought to presume that the sum to be paid was intended as a consideration for the first only, and if they will not presume it for want of evidence of its sufficiency, that parol evidence ought to be admitted to show the value of the Williams' property to have been more than sufficient to pay the sum plainly charged on both.

Now there is no established rule of construction that if a

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testator, having devised two messuages to his son and charged the devisee with the payment of legacies, that if he add this informal power as to one, it is equivalent to an expressed limitation as to the other. Nor is it a necessary inference or logical conclusion arising from the omission to use certain informal words, which have been construed to show an intention to give a fee as to one, that the testator did not intend to give a fee in the other of the messuages charged. Besides, it is clear that Benjamin could not repudiate his obligation to pay the legacies by refusing to accept the gift of the Williams' farm, while he retained that of the homestead. To conclude, therefore, from this fact that the testator did not intend to give a fee in both would be mere conjecture, and that with no sufficient reason to support it.

The face of this will shows that the testator did not suppose these informal words, giving a power to sell as to one, were necessary to enlarge the estate to a fee, much less that their omission would limit the devise of the other to a life estate, for he adds the same power to the life estate given to his wife.

If we were to indulge in conjecture why this phrase was coupled with one of the estates devised and not with the other, it would be that the testator intended to confine the charge of the legacies to the "homestead," and not the Williams' farm, or that he wished the one to remain in the family and name, while the son should

be at full liberty to dispose of the other as he might think proper.

The rule of law which gives a fee where the devisee is charged with a sum of money is a technical dominant rule, and intended to defeat the effect of the former rule, which itself so often defeated the intention of the testator.

Courts have always been astute, as we have said, to find reasons for rescuing a will from the artificial rule established in favor of the heir-at-law, and will not even be acute in searching for reasons to restore its force, where the statute has not abolished it. We are not compelled to make this inference or implication through submission to any established rule of construction; on the contrary, we are required to make an exception to one on

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mere conjecture, and to introduce parol testimony as to value to justify a departure from it. A court may look beyond the face of the will where there is an ambiguity as to the person or property to which it is applicable, but no case can be found where such testimony has been introduced to enlarge or diminish the estate devised.

We are of opinion, therefore, that Benjamin L. Benson took an estate in fee in both the messuages described in the will.

The judgment of the circuit court is therefore affirmed with costs.

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