

**Stanley Vs. Colt**

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**Court :** US Supreme Court

**Decided On :** 1866

**Appeal No. :** 72 U.S. 119

**Appellant :** Stanley

**Respondent :** Colt

**Judgement :**

Stanley v. Colt - 72 U.S. 119 (1866)

U.S. Supreme Court Stanley v. Colt, 72 U.S. 5 Wall. 119 119 (1866)

**Stanley v. Colt**

**72 U.S. (5 Wall.) 119**

*ERROR TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF CONNECTICUT*

## **SYLLABUS**

1. Whether words in a devise constitute common law conditions annexed to an estate, a breach of which or any one of which will work a forfeiture, defeat the devise, and let in the heirs, or whether they are regulations for the management of

the estate, and explanatory of the terms under which it was intended to have it managed, is a matter to be gathered not from a particular expression in the devise, but from the whole instrument.

2. The word "provided," though an appropriate word to constitute a common law condition, does not invariably and of necessity do so. On the contrary, it may give way to the intent of the party as gathered from an examination of the whole instrument, and be taken as expressing a limitation in trust.

*Ex. Gr.* Where a testator devised real estate to an ecclesiastical society for its use or benefit, " *provided* that said real estate be not hereafter sold or disposed of," and in connection and continuation added numerous minute directions in the nature of regulations for the guidance of trustees whom he appointed to manage it, and with a view to the greatest advantage of the society, *held* that the latter, being to be regarded as mere limitations in trust, the former was a limitation in trust also, not a common law condition.

3. Where, under a will in some respects peculiar, a devise was made to a society for its use and benefit, but the possession, superintendence, and direction of the estate, and the letting, leasing, and management of the same was given to trustees who were invested with power to perpetuate their authority indefinitely -- the only active duties of the society being to receive the rents and profits for its use and benefit -- *held* that the legal estate was in the trustees, not in the society.

4. The Legislature of Connecticut has the powers of an English court of chancery to direct a sale of real estate devised to charitable purposes, even though it be provided by the devise that the estate shall never be sold in cases where lapse of time or changes in the condition of the property or circumstances attending it make it prudent and beneficial to the charity to alien the specific land and invest the proceeds in other securities, taking care, however, that no diversion of the gift be permitted.

5. Where the legislature, setting out reasons at large for the exercise of such a power, directs a sale of land so devised and provides for the secure reinvestment

of the proceeds to the same uses as directed by the will as to the estate sold, this Court cannot revise the facts upon which the legislature has exercised the power.

From the year 1702 or earlier and down to the year 1818

Page 72 U. S. 120

and afterwards, with some unimportant alterations, there existed and was in force in Connecticut a statute thus:

"That all such lands, tenements, hereditaments, and other estates, that either formerly have been or hereafter shall be given and granted, either by the General Assembly of this Colony or by any town, village, or particular person or persons, for the *maintenance of the ministry of the Gospel* in any part of this Colony, or schools of learning, or for the relief of poor people, or for any other public and charitable use, shall forever remain and be continued to the use or uses to which such lands, tenements, hereditaments, or other estates, have been or shall be given and granted according to the true intent and meaning of the grantors and to no other use whatsoever, and also be exempted out of the general lists of estates, and free from the payment of rates."

This act being thus in force, William Stanley, of Hartford, Connecticut, in October, 1786, made his will in the material parts as follows:

" *Imprimis.* I give and bequeath unto the Second Church of Christ, in Hartford, such sum, to be paid *out of the profits or rents of my real estate* as hereafter mentioned as shall be necessary to purchase a silver tankard of the same weight and dimensions, as near as conveniently may be, of that one formerly given said church by Mr. John Ellery, deceased, *the same to be procured by my trustees*, hereafter named, and presented to the officers of said church, to be kept forever for the use and benefit of said church, and my said trustees are to cause my name, coat of arms, the time of my death and my age thereon to be engraved."

" *Item.* I give and devise unto my niece, Elizabeth Whitman, one piece of land &c.;, also one other piece of land lying &c.;, and is part of the farm that formerly

belonged unto my honored father, Colonel Nathaniel Stanley, deceased, and lies in the southeast corner of said farm and butts on a highway, unto the said Elizabeth, and to her heirs and assigns forever, *provided* she shall not make any claim upon my estate for any services done for me."

" *Item.* I do also give and devise unto my sister Abigail the

Page 72 U. S. 121

use and improvement of all my real estate (except that part thereof given unto her daughter Elizabeth) during her natural life, with this reserve, that she shall not cut any of the trees growing in that lot called Rocky Hill lot."

" *Item.* After the decease of my said sister, Abigail Whitman, I give and devise *the whole* of my real estate of every kind and description, except which is hereinbefore given unto my niece, Elizabeth Whitman, unto the Second or South Ecclesiastical Society, in the Town of Hartford, to be and remain to the use and benefit of said Second or South Society and their *successors forever, provided* that said real estate be not *ever hereafter sold or disposed of, but the same be leased or left,* and the annual rents or profits thereof applied, to the use and benefit of said Society, and the *letting, leasing, and managing* of said estate to be *under the management and direction of certain trustees* hereafter named by me, and their successors to be appointed in manner as hereafter directed. And it is my will that the first rents, profits, or avails issuing from said real estate shall, *by my trustees after it comes to their possession,* be applied to the purchasing of the aforesaid tankard. And it is my will that so much of the rents, profits, or avails next issuing out of my real estate, my said *trustees shall reserve in their own hands* as shall be sufficient to purchase and pay for the one-half part of the price of a proper bell for the meeting house in said Second Society, of the same weight and dimensions of that in the North Meeting House, in said town of Hartford, and be applied by my said trustees for that purpose, *provided* that the other part be procured by subscription or otherwise without taxing the inhabitants of said society, and in case said Second Society shall ever hereafter be divided, it is my will that *my said real estate* be not divided, but remain entire and *forever* to the

said Second Society, and such part of said society as shall hereafter secede or be divided therefrom are hereby excluded from all the use and benefit of my said estate so devised as aforesaid to said Second Society."

"And for the best management and direction of *my said real estate* I do hereby appoint my friends, W. Ellery &c.;, *trustees to superintend, direct, and manage said real estate* for the use and benefit of said Second Society in manner as above directed, and unto them, my trustees, I do give authority and power to nominate their successors to said trust, which is to be done in the manner and form following, *viz.*, that immediately after my

Page 72 U. S. 122

decease, they shall nominate and appoint some meet person or persons, as occasion may require, into said trust and office; so be it that at no time more than three persons shall act in said trust or office or belong thereto at the same time. And all persons successors hereafter to said trust and office shall at all times in future have like power to *superintend, direct, and manage said estate* for said society, and in like manner to nominate and appoint their successors in said trust and office and to *perpetuate* said *trust* for the benefit and use of said society as occasion may from time to time require. And the aforesaid real estate or any part thereof shall not be rented or let for a longer term or lease than thirty years before the expiration of the same, and said trustees and their successors shall have full power to *let and lease said estate and to do all other legal acts for the well ordering and management of said estate under the limitation and restrictions as herein is before expressed.* "

The ecclesiastical society named in the devise above quoted was established by authority of the State of Connecticut for the support of the Gospel ministry and the maintenance of public worship, and with power for that purpose to hold real estate.

After the death of Stanley and his sister Abigail, who had the life estate and whose death occurred prior to the year 1800, it took possession of the premises, and down to 1852 the society and trustees managed them in the manner directed in

the will, appropriating the income from time to time to the purposes of the society. During the whole time, the premises were untaxed, the only ground for the exemption being the provision in the act of 1702, quoted on p. 72 U.S. 120|120. In the year 1852, the Legislature of Connecticut, upon the application of the society and of the trustees, passed a resolution reciting a memorial by the church and trustees, showing the will, possession of the land &c.;

"Also showing that the said land has on it a great number of buildings, owned by the tenants, built of wood, and in a decayed state; that the land on which they stand has, by the lapse of about three-fourths of a century, become valuable, some of which is in the central part of the City of Hartford, and too

Page 72 U. S. 123

valuable to be improved profitably in any other way than by the erection on them of permanent brick or stone blocks of buildings; that the lessees cannot safely erect such buildings because of the uncertainty of their tenure and because they would thereby place themselves in the power of the owners, and that the owners have not the means, and could not lawfully contract debts for the purpose of building; that other parts of the estate are subject to other embarrassments arising from the restrictions of the will, so that said property has become unproductive and the income greatly reduced, and the object of the testator in devising the property to the society frustrated; that those embarrassments, both to the owners and occupants, consequent on the restrictions in the will are not likely to be removed, but will be increased by time unless said land can be sold and conveyed in fee simple, and the proceeds suitably invested."

"And praying the Assembly to authorize a sale and conveyance of said land, under such guards and provisions as will secure the application of the proceeds according to the true intent and meaning of said will, as per petition on file."

This legislative record thus proceeded:

"This Assembly having inquired into the facts stated in said memorial, find the same to be true, and do further find that the most valuable portion of said estate is

situated in a central part of said City of Hartford, is covered with unsuitable wooden buildings, and it is *for the interest of the people of said city* that more useful and valuable buildings should be built thereon, and do grant the prayer thereof; and it is therefore"

" *Resolved* that the said trustees and their successors, together with D. F. Robinson as agent, shall have power, and they are hereby authorized, to sell and convey the said lands in said memorial mentioned, and such parts or proportions thereof as may from time to time be advantageously sold, and to execute good and sufficient deeds thereof in fee simple, with or without covenants of seizin and warranty on the part of said society, subject to liens or encumbrances, if any shall lie upon said property &c.; And the proceeds of such sales shall be by the trustees and agent invested in good and sufficient bonds and mortgages of real estate, of double the value of the amount invested; and the interest of said proceeds shall be paid over to the treasurer of

Page 72 U. S. 124

said society, and shall be appropriated to the use of said society in the same manner and subject to the same use as the rents or income of said property are by said will required to be appropriated, and for no other uses or purposes whatever. And all mortgages or investments made as aforesaid from time to time, and whenever such loans or investments shall be shifted or changed, the securities shall be taken in the name of such trustees and their successors and expressed to be for the use and benefit of said society according to the will of William Stanley, deceased, *provided, however*, that before any person or persons shall proceed to make sale of said lands or any part thereof, he or they shall become bound in a good and sufficient bond to the Judge of Probate for the District of Hartford conditioned for the faithful performance of the duty in the premises, and said trustees shall also give the like bonds for the faithful performance of their trust."

The heirs at law of Stanley had no notice of any of these proceedings.

The trustees and agent accordingly, in August, 1852, by deed reciting the legislative proceeding, and purporting to be made in virtue of their said capacity of trustees and agent and of the powers conferred by the act, sold and conveyed, with special warranty, to one Colt, "all the right, title, and interest that said Second Ecclesiastical Society &c.;; have or ought to have in or to the above-described tract of land," one of the tracts devised.

Colt having entered into possession, the heirs at law of Stanley now brought ejectment against him for the premises. The court instructed the jury that on the case presented the defendant was entitled to their verdict, and judgment having gone accordingly, the case was now here on error.

Page 72 U. S. 163

MR. JUSTICE NELSON delivered the opinion of the Court.

This is an action of ejectment by the heirs of William Stanley to recover for breach of condition a tract of land, situate in the City of Hartford, devised by the ancestor to an ecclesiastical society and their successors on the 7th October, 1786, and one of the principal questions in the case is whether or not the devise was upon a condition which, when broken, would let in the heir, or was a limitation or trust the breach of which would work no such consequence.

The material parts of the will are as follows:

"I give and devise the whole of my real estate of every kind and description . . . unto the Second or South Ecclesiastical Society, in the Town of Hartford, to be and remain to the use and benefit of said Second or South Society and their successors forever."

Then comes the condition or limitation upon the devise:

" *provided* that said real estate be not ever hereafter sold or disposed of, but the same be leased or let, and the annual rents or profits thereof applied to the use and benefit of said society, and the letting, leasing,

and managing of said estate to be under the management and direction of certain trustees hereafter named by me and their successors, to be appointed in manner as hereafter directed."

And after appointing three trustees and prescribing the manner of the appointment of their successors, and prescribing also their authority and duties, the testator adds:

"And the aforesaid real estate, or any part thereof, shall not be rented or let for a longer term or lease than thirty years before the expiration of the same."

And another part of the will is as follows:

"And in case said Second Society shall ever hereafter be divided, it is my will that my real estate be not divided, but remain entire and forever to the said Second Society, and such part of said Second Society as shall hereafter secede or be divided therefrom are hereby excluded from all the use and benefit of my real estate, so devised as aforesaid to the said Second Society."

These are the several clauses in the will relating to the management of the estate, following the proviso, and which, taken together, constitute the conditions, limitations, or qualifications annexed to it, and to the enjoyment of the estate by the society.

All of them may not be equally important, but we are bound to assume that each and all of them was regarded by the testator as material in the regulations which he has seen fit to adopt and carry into his will.

These conditions or limitations following the proviso are briefly:

1. The estate is not to be sold or disposed of, but to be leased by trustees, and the rents paid over to the society.
2. The leases are not to exceed thirty years in any one term.

3. The estate is not to be divided in the event of a division of the society, and
4. It is to be managed and directed exclusively by trustees who are appointed in the will and by their successors, the surviving trustees to appoint when a vacancy happens.

The question is whether these are strict common law conditions annexed to the estate a breach of which or of

Page 72 U. S. 165

any one of them will work a forfeiture, defeat the devise, and let in the heir, or whether they are regulations for the guide of the trustees and explanatory of the terms under which he intended the estate should be managed with a view to the greatest advantage in behalf of the society.

The difference between the two interpretations and the consequences flowing from them is very material. As we have seen, a condition, if broken, forfeits the estate and forever thereafter deprives the society of the gift, and not only this, but the heirs become seized of the first estate, and avoids, of course, all intermediate charges or encumbrances and takes also free and clear all the expenditures and improvements that may have been laid out on the property.

On the other hand, if these limitations are to be regarded as regulations to guide the trustees and explanatory of the terms upon which the devise has been made, they create a trust which those who take the estate are bound to perform, and, in case of a breach, a court of equity will interpose and enforce performance. The estate is thus preserved and devoted to the objects of the charity or bounty of the testator even in case of a violation of the limitations annexed to it. A fraudulent or unfaithful trustee will be removed and another appointed to his place. A diversion of the fund will be arrested and an account compelled for any waste or improvident use of it.

Mr. Sugden, speaking of conditions, observes, that what by the old law was deemed a devise upon condition would now, perhaps, in almost every case, be

construed a devise in fee upon trust, and, by this construction, instead of the heir's taking advantage of the condition broken, the *cestui que trust* can compel an observance of the trust by a suit in equity. [ [Footnote 1](#) ]

In the recent case of *Wright v. Wilkin*, in the Queen's Bench, the court approved of this observation of Mr. Sugden, and in that case construed a devise, on express condition in terms, looking through the whole will, and regarding the intent of the testator as falling within this rule. The court

Page 72 U. S. 166

relied very much upon the words following the condition as explaining away the strict common law meaning of the term and as importing a meaning inconsistent with a strict interpretation. This judgment was affirmed in the Exchequer.

It is true that the word "proviso" is an appropriate one to constitute a common law condition in a deed or will, but this is not the fixed and invariable meaning attached to it by the law in these instruments. On the contrary, it gives way to the intent of the parties as gathered from an examination of the whole instrument, and has frequently been thus explained and applied as expressing simply a covenant or limitation in trust. Several cases were referred to on the argument to this effect, and many more might have been added.

In looking at the explanatory part of the will in this case, it will be seen that the testator had in his mind a settlement of the estate in trust for the beneficiaries, and with this view established a code of regulations to guide the trustees in the management of it that would continue through all time, and which is wholly inconsistent with the idea that the estate might be defeated by a breach of anyone of them. After appointing the three trustees, he adds:

"I do give authority and power to nominate their successors to said trust, which is to be done in the manner following: that immediately after my decease, they . . . shall appoint some meet persons . . . as the occasion may require into said trust or office, so be it that at no time more than three persons shall act in said trust or office, . . . and all persons, successors hereafter to said trust and office shall at all

times in future have like power to superintend, direct, and appoint their successors in said trust and office and to perpetuate said trust for the benefit and use of said society as occasion may from time to time require."

And he closes by saying that the said trustees and their successors shall have full power to lease the estate, and "do all other legal acts for the well ordering and management of said estate under the limitations and restrictions as hereinbefore expressed."

This interpretation of the devise was sought to be avoided

Page 72 U. S. 167

on the argument by separating all the limitations and restrictions in respect to the enjoyment of the estate from that forbidding the sale or disposal of it, thereby conceding that they were limitations in trust, but insisting that the other constituted a condition for a breach of which a forfeiture was incurred. But the difficulty in the argument is that the same clause embraces not only the prohibition to sell, but enjoins the duty to lease, and the application of the rents to the use of the society, and also the management of the estate by the trustees, and which management contains the prohibition to lease for terms not exceeding thirty years. The separation is therefore not only arbitrary but in disregard of the express words of the testator. The injunction to lease is as positive as that not to sell, and both are embraced in the same clause, and if the term "proviso" is to be construed as a condition in respect to the one, it must consistently be so construed in respect to the other. And the same observations are also applicable to the other limitations.

This devise to the Ecclesiastical Society is in some respects peculiar. The possession, management, and control of the estate are given exclusively to the trustees, who, according to the regulations, are invested with power to perpetuate their authority indefinitely. The only active duties of the society -- the beneficiaries -- is to receive the rents and profits for their own use and benefit. Of course the trustees, subject to the limitations and restrictions annexed to the enjoyment of the estate, possess all the power and dominion over it that belongs to an owner, and

are bound to take the same care of it and exercise the same attention, skill, and diligence in its management that a prudent and vigilant owner would exercise over his own. They are bound to rent the property, collect the rents, and pay them over to the society, to protect the possession, prevent waste, see that the taxes are paid, and in the words of the testator, "do all other legal acts for the well ordering and management of the estate." Being thus in the exclusive possession and control of the property and having devolved upon them

Page 72 U. S. 168

the manifold duties incident thereto, it is quite clear that the trustees are clothed with the legal estate.

Mr. Jarman states the general principle:

"The mere fact that they are made agents in the application of the rents is sufficient to give them the legal estate, as in the case of a simple devise to A. upon trust to pay the rents to B., and it is immaterial in such case that there is no direct devise to the trustees if the intention that they shall take the estate can be collected from the will. Hence a devise to the intent that A. shall receive the rents and pay them over to B. would clearly vest the estate in A. [ [Footnote 2](#) ]"

The same effect where the duty is devolved upon them to pay taxes and make repairs. [ [Footnote 3](#) ] And it is laid down generally that whenever a trust is created, a legal estate sufficient for the execution of the trust shall, if possible, be implied. [ [Footnote 4](#) ] Indeed it would be very difficult, if not impossible, for the trustees in the present case to execute their various and multiplied duties over this property without being clothed with the legal estate, under a mere naked power.

The distinction between a power and a trust is marked and obvious. Powers, as Chief Justice Wilmot observed, are never imperative; they leave the act to be done at the will of the party to whom they are given. Trusts are always imperative, and are obligatory upon the conscience of the party entrusted. [ [Footnote 5](#) ]

Our conclusion is that the construction urged by the plaintiffs of the will importing a condition a breach of which forfeits the devise is not well founded.

There is another ground of defense to this action that we are of opinion is equally conclusive against the plaintiffs.

On an application of the society and trustees to the Legislature of Connecticut to be permitted to sell the premises in question, setting out the reasons at large in support of it, the application was granted, and an act passed accordingly.

Page 72 U. S. 169

This act authorized the trustees, together with a third person, to sell the lands in the manner therein prescribed and to invest the proceeds at interest in bonds and mortgages of real estate of double the value of the amount invested, appropriating the interest to the use of the society in the same manner and subject to the same use as the rents or income of said property are by the will required to be appropriated.

The defendant is in possession under the title derived from a sale in pursuance of this act of the legislature.

In England and in this country where a court of chancery exists, a charity of the description in question is a peculiar subject of the jurisdiction of that court, and in cases of abuse or misuse of the charity by the trustees or agents in charge of it, this Court will interpose to correct such abuses and enforce the execution of the charitable purposes of the founder. So, by lapse of time or changes as to the condition of the property and of the circumstances attending it have made it prudent and beneficial to the charity to alien the lands and vest the proceeds in other funds or in a different manner, it is competent for this Court to direct such sale and investment, taking care that no diversion of the gift be permitted. Lord Langdale, the Master of the Rolls, observed in *The Attorney General v. South Sea Company*, [ [Footnote 6](#) ]

"It is plain that in ordinary cases a most important part of this duty is to preserve the property, but it may happen that the purposes of the charity may be best sustained and promoted by alienating the specific property. The law has not forbidden the alienation, and this court, upon various occasions, with a view to promote interests of charities, has not thought it necessary to preserve the property *in specie*, but has sanctioned its alienation. [ [Footnote 7](#) ]"

This power, in the State of Connecticut, it appears, is exercised by its legislature, as in the present instance. Many acts of the kind have been referred to in the argument, extending

Page 72 U. S. 170

through a long series of years down to the present time.

We cannot doubt that the power exists in the legislature, and it is not for this Court to revise the facts upon which it has seen fit to exercise it.

MR. JUSTICE DAVIS dissented.

*Judgment affirmed.*

[ [Footnote 1](#) ]

1 Sugden on Powers 123, 7th London ed.

[ [Footnote 2](#) ]

2 Jarman on Wills 202, Perkins' Ed.

[ [Footnote 3](#) ]

*Ibid.*, 201, and cases cited.

[ [Footnote 4](#) ]

Lewin on Trusts and Trustees 164.

[ [Footnote 5](#) ]

2 Sugden on Powers 588.

[ [Footnote 6](#) ]

4 Bevan 458.

[ [Footnote 7](#) ]

See *also* Lewin on Trusts and Trustees 373 and cases, and Shelford on Law of Mortmain 687.

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