Roberts Vs. Lewis

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Decided On : May-14-1894

Appeal No. : 153 U.S. 367

Appellant : Roberts

Respondent : Lewis

Judgement :

Roberts v. Lewis - 153 U.S. 367 (1894)
U.S. Supreme Court Roberts v. Lewis, 153 U.S. 367 (1894)

Roberts v. Lewis

No. 1044

Submitted April 23, 1894

Decided May 14, 1894

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CERTIFICATE FROM THE CIRCUIT COURT

OF APPEALS FOR THE EIGHTH CIRCUIT

SYLLABUS

Under a will by which the testator devises and bequeaths to his wife

"all my estate, real and personal, of which I may die seised, the same to be and remain hers, with full power, right and authority to dispose of the same as to her shall seem most meet and proper, so long as she shall remain my widow, upon the express condition, however, that if she should marry again, then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike,"

the widow has power during widowhood to convey to third persons an estate in fee simple in his lands.

Giles v. Little, 104 U. S. 291 , overruled, and *Little v. Giles,* 25 Neb. 313, followed.

This was an action of ejectment, brought June 11, 1887, by Walter F. Lewis against Artemas Roberts, in the Circuit Court of the United States for the District of Nebraska, to recover possession of six lots in the Town of South Lincoln, in the County of Lancaster, and State of Nebraska. The circuit court gave judgment for the plaintiff, and the case was taken by writ of error to the Circuit Court of Appeals for the Eighth Circuit, which certified to this Court the following facts:

On May 10, 1869, Jacob Dawson duly made his last will, which was duly admitted to probate in 1869, after his death, and which, omitting the formal parts, was as follows:

"After all my lawful debts are paid and discharged, the residue of my estate, real and personal, I give and bequeath and dispose of as follows, to-wit: to my beloved wife, Editha J. Dawson, I give and bequeath all my estate, real and personal, of which I may die seised, the same to be and remain hers, with full power, right and authority to dispose of the same as to her shall seem most meet and proper, so long as she shall remain my widow, upon express condition, however,

that if she should marry again, then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike, and in case any of my children should have deceased, leaving issue, then the issue so left to receive the share to which said child would be entitled. I likewise make, constitute, and appoint my said wife, Editha J., to be executrix of this, my last will and testament, hereby revoking all former wills made by me."

At the time of his death, he had a perfect title to the lots in controversy in this suit. On March 15, 1870, Editha J. Dawson conveyed these lots by warranty deed to Paran England, who on December 15, 1871, conveyed them by warranty deed to Roberts, the plaintiff in error. On December 14, 1879, Editha J. Dawson married Henry M. Pickering. On September 15, 1879, the children of Jacob Dawson made a warranty deed of these lots to Hiland H. Wheeler and Lionel C. Burr, and Wheeler and Burr afterwards made a warranty deed thereof to Ezekiel Giles, who, in May, 1887, conveyed them by warranty deed to Lewis, the defendant in error.

While the title in these lots was vested in Giles, as aforesaid, he brought an action, claiming under that title, to recover another lot in the same county which had belonged to Jacob Dawson at the time of his death, against one Little, who claimed under a deed executed by Editha J. Dawson during her widowhood. That case was brought by writ of error to this Court, which held at October term, 1881, that, under the will of Jacob Dawson, his widow only took

"an estate for life in the testator's lands, subject to be diverted on her ceasing to be his widow, with power to convey her qualified life estate only,"

and that "her estate in the land, and that of her grantees, determined on her marriage with Pickering." *Giles v. Little,* 104 U. S. 291 .

After that decision, but whether before or after the aforesaid deed from Giles to Lewis did not appear, a suit was brought in the District Court of Lancaster County, by various grantees of the widow, against Giles, to quiet their title against the title

claimed by Giles under the aforesaid deed from the

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children of Jacob Dawson, and was taken by appeal to the Supreme Court of Nebraska, which held that the will of Jacob Dawson, under the statutes of the State of Nebraska, enabled his widow, prior to her remarriage, to convey an estate in fee simple in any of the lands whereof her deceased husband had died seised. *Little v. Giles,* 25 Neb. 313.

Upon these facts, the circuit court of appeals duly certified to this Court the following questions or propositions of law:

"First. In determining the nature of the estate that became vested in said Editha J. Dawson under said will of her deceased husband, Jacob Dawson, in and to lands situated in the State of Nebraska, whereof said Jacob Dawson died seised and possessed, should the circuit court of appeals be governed by the decision of the Supreme Court of the United States in *Giles v. Little,* 104 U. S. 291 , 104 U. S. 300 , or by the subsequent decision of the Supreme Court of the State of Nebraska in *Little v. Giles,* 25 Neb. 313, 334?"

"Second. Did the aforesaid will of Jacob Dawson vest his widow with such an estate in lands whereof the testator died seised, situated in the State of Nebraska, that during her widowhood she could convey to third parties an estate in fee simple therein?"

"Third. Should the construction of the will of Jacob Dawson, deceased, which was adopted by the Supreme Court of the United States in *Giles v. Little,* 104 U. S. 291 , be adhered to by the United States Circuit Court of Appeals for the Eighth Circuit in determining the right of Walter F. Lewis in and to the property heretofore described, in view of the fact that said Walter F. Lewis purchased said property subsequently to the promulgation of said decision in *Giles v. Little* and prior to the decision of the Supreme Court of the State of Nebraska in the case of *Little v. Giles,* 25 Neb. 313? "

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MR. JUSTICE GRAY, after stating the case, delivered the opinion of the Court.

This certificate distinctly presents for decision the question (argued, but not decided, when this case was before this Court at a former term, reported in 144 U. S. 653), of the construction of the will of Jacob Dawson, the material part of which was as follows:

"To my beloved wife, Editha J. Dawson, I give and bequeath all my estate, real and personal, of which I may die

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seised, the same to be and remain hers, with full power, right and authority to dispose of the same as to her shall seem most meet and proper, so long as she shall remain my widow, upon the express condition, however, that, if she should marry again, then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike."

By the statutes of Nebraska,

"every devise of land in any will hereafter made shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that the devisor intended to convey a less estate,"

and "the term *heirs,' or other technical words of inheritance, shall not be necessary to create or convey an estate in fee simple." Nebraska Comp.Stat. c. 23, 124; c. 73, 49.*

In the opinion delivered by this Court in a former case between different parties, and concerning other land, the second of those sections was not referred to, and the first was imperfectly quoted (omitting the word "clearly" before "appear"), and was treated as of no weight, and it was held, reversing the decision of Judge McCrary in *Giles v. Little,* 13 F. 100, that by the true construction of the will the widow

"took under it an estate for life in the testator's lands, subject to be divested on her ceasing to be his widow, with power to convey her qualified life estate only,"

and that "her estate in the land, and that of her grantees, determined on her marriage with Pickering." *Giles v. Little,* 104 U. S. 299 , 104 U. S. 300 .

The Supreme Court of Nebraska, in a subsequent case, considered those sections of the statute as controlling the construction of the will, and making it clear that the widow took an estate in fee. *Little v. Giles,* 25 Neb. 321, 322. That court was also of opinion that the gift over to the children passed only that portion of the estate, real or personal, not disposed of by the widow during her widowhood, and, upon the whole case, concluded

"that the intention of the testator was to empower his widow to convey all of his real and personal estate, if she saw fit to do so, and, as she had exercised this right and power before her remarriage, the

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grantees under her deeds acquired all the title of the testator to such lands."

25 Neb. 327, 328, 334.

The opinion of the supreme court of the state appears to have been formed upon full consideration of the difficulties of the case, and is entitled to great weight, especially upon the construction of the statute of the state. *Suydam v. Williamson,* 24 How. 427. And this Court, on reconsideration of the whole matter, with the aid of the various judicial opinions upon the subject and of the learned briefs of counsel, is of opinion that the sound construction of this will as to the extent of the power conferred on the widow, is in accordance with the conclusion of the state court, and not with the former decision of this Court, which must therefore be considered as overruled.

The testator's primary object manifestly was to provide for his widow. He begins by giving her "all my estate, real and personal," which, of itself, would carry a fee unless restricted by other words. *Lambert v. Paine,* 3 Cranch 97. He then says,

"to be and remain hers," which, upon any possible construction, secures to her the full use and enjoyment of the estate while she holds it. She is also vested in the most comprehensive terms

"with full power, right, and authority to dispose of the same [which, as no less title has yet been mentioned, naturally means the whole estate] as to her shall seem most meet and proper, so long as she shall remain my widow."

This last clause, so far as it controls the previous words, has full effect, if construed as limiting the time during which the widow may have the use and enjoyment of the estate, and the power to dispose of it, and not restricting the subject to be disposed of. The power thus conferred therefore in its own terms, as well as by the general intent of the testator, gives her, during widowhood, the right to sell and convey an absolute title in any part of the estate, for it would be difficult, if not impossible, to obtain an adequate price for a title liable to be defeated in the hands of the purchaser by the widow's marrying again.

That the power was intended to be unlimited in this respect appears even more distinctly by the terms of the next clause,

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by which, if she should marry again, the testator declares it to be his will that "all of the estate herein bequeathed, or whatever may remain, should go" to his surviving children. By not using the technical word "remainder," or making the devise over include the entire estate at all events, but carefully adding, after the words, "all the estate herein bequeathed," the alternative, "or whatever may remain" (which would otherwise have no meaning), he clearly manifests his intention to restrict the estate given to the children to whatever has not been disposed of by the widow, and there is nothing upon the face of the will, nor are there any extrinsic facts in this record, having any tendency to show that the power of the widow is less absolute over the real estate than over the personal property.

The cases of *Smith v. Bell,* 6 Pet. 68, and *Brant v. Virginia Coal Co.,* 93 U. S. 326 , relied on in support of the opposite conclusion, involved the construction of

wills expressed in different language from that now before the Court.

In *Smith v. Bell,* the testator bequeathed "all his personal estate," consisting principally of slaves, to his wife, "to and for her own use and benefit and disposal, absolutely, the remainder of said estate, after her decease, to be for the use of" his son, and the decision was that the wife took a life estate, only, and the son a vested remainder. The wife had made no conveyance of the property; the words of the gift over were the technical ones, "the remainder of my estate," appropriately designating the whole estate after the wife's death, and the court distinctly intimated that if the will were construed as giving the wife "the power to sell or consume the whole personal estate during her life," a gift over of "what remains at her death" would be "totally incompatible," and "void for uncertainty." 6 Pet. 31 U. S. 78 . But in the case at bar, the gift over is, in express terms, of "whatever may remain." If the intent expressed by these words can be carried out, the children take only what has not been disposed of. If the clause containing them is repugnant and void, the view of the Supreme Court of Nebraska that the widow took an estate in fee is fortified. *See Howard v. Carusi,* 109 U. S. 725 ; *Potter v. Couch,* 141 U. S. 296 , 141 U. S. 315 -316.

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In *Brant v. Virginia Coal Co.,* the bequest which was held to give a life estate, and no power to convey a fee, was only of the testator's estate, real and personal, to his wife, "to have and to hold during her life, and to do with as she sees proper before her death." 93 U.S. 93 U. S. 327 .

The numerous cases cited in the briefs have been examined, and show that the general current of authority in other courts is in favor of our present conclusion, but, as they largely depend upon the phraseology of particular wills, it would serve no useful purpose to discuss them in detail.

It is express a positive opinion upon the question whether, under this will, the widow took an estate in fee, for if she took a less estate, with power to convey in fee, the result of the case, and the answers to the questions certified, must be the

same as if she took an estate in fee herself.

For the reasons above stated, this Court is of opinion that the will of Jacob Dawson did give his widow such an estate in lands in Nebraska, of which he died seised, that she could, during her widowhood, convey to third persons an estate in fee simple therein, and that the circuit court of appeals, in determining the nature of the estate vested in her by the will in such lands, should be governed not by the former decision of this Court in *Giles v. Little,* 104 U. S. 291 , but by the decision of the Supreme Court of Nebraska in *Little v. Giles,* 25 Neb. 313.

The result is that the first question certified must be answered accordingly, that the second question must be answered in the affirmative, and that the third question must be answered in the negative, and that these answers be

Certified to the circuit court of appeals.