

Haliburton Vs. the Administrator-general of Bengal and ors.

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Court : Kolkata

Decided On : Mar-16-1894

Reported in : (1894)ILR21Cal488

Judge : W. Comer Petheram, C.J. and ;Macpherson, J.

Appellant : Haliburton

Respondent : The Administrator-general of Bengal and ors.

Judgement :

W. Comer Petheram, C.J.

1. The plaintiff is one of the executors of Mary Henrietta Adams, who died in the month of April 1892; the defendants are the Administrator-General of Bengal and the surviving relatives of Henry Adams, who died in 1845, and who was the husband of Mary Henrietta Adams; and the action is brought to construe the will of Henry Adams, and to obtain possession of his estate from the Administrator-General, on the ground that in the events which have happened the whole of his estate became the absolute property of his widow, and passed by her will to the plaintiff, who is her executor and the residuary devisee under her will.

2. Henry Adams made his will on the 30th of April 1844, and died on the 17th of May 1815, leaving a widow and two infant daughters, both of whom died infants and unmarried, the first on the 25th of June 1846, the second on the 10th of February 1862. The widow lived until the 14th of April 1892, but never married

again.

3. The will of Henry Adams provides for three events. First, that of his wife remaining his widow; second, that of her marrying again and his children being alive; and third, that of her marrying again and his children being dead. The event which did happen was the first, i.e., his wife remained his widow until her death; but in order to ascertain what was the intention of the testator in this event we must look at the whole will.

4. The will commences : I devise my estate, etc., as follows:

First, in the event of my wife 'Mary Henrietta remaining my widow, that the estate shall be for the general benefit of herself and my child Mary Harriet, and any other child or children which may be born of my body through her, either before or after my death.' It then goes on to provide that the testator's wife, should she remain his widow, shall have the full life-interest, and shall not be annoyed with any vexation about shares during her lifetime, but that after her death his children and their descendants shall take the estate between them per stirpes. The question is whether this was an absolute gift of the estate to the widow and children jointly, with restrictions as to their mode of enjoyment of the gift, in which case the widow not having married, and having survived her children, all of whom died unmarried, took the whole estate, and it passed by her will to the plaintiff, or whether it was a gift of a life estate only to the widow, with remainder to her children and their descendants, in which case in the events which have happened the whole estate has not been disposed of by the will, the estate on the death of the widow passed to the heir-at-law of Henry Adams, and the suit must fail: *Lassence v. Tierney* 1 M. & G. 551. If we look at the portion of the will which I have already quoted above, it may no doubt be contended with much force that it indicates no intention on the part of the testator that his widow should take more than a life-estate, and that he was not when he wrote this portion of his will contemplating the extinction of his own descendants in the lifetime of his widow; but when we look at the subsequent provisions of the will, and as I have said before we must look at it all to ascertain what his intentions were, it is, I think, apparent that he did contemplate the extinction of his descendants in her lifetime, and did intend that in that event she

should take more than a life-interest in his estate. The third event for which he provides is that of his widow having re-married and her children being all dead, and in that case he gives half the ultimate interest in his estate to his half-brother Frederick Broadhead, and his children, and the other half to his wife, and if his half-brother is dead without issue, he gives the whole to his wife. It is, I think, impossible to suppose that he intended to give the ultimate estate to his widow if she married again and to deprive her of it if she remained his widow, and consequently I think that, reading the will altogether, it appears that it was his intention by the first devise to give the estate to his wife and children jointly, and that what follows was merely intended to restrict the mode in which they should enjoy it.

5. For these reasons, I am of opinion that the plaintiff's suit must be decreed but as the meaning of the will is obscure the costs of all parties, including costs of applications which have been reserved, should be paid out of the estate.

Macpherson, J.

6. I agree as to the construction of the will. The Administrator-General as representing the estate of Henry Adams will get his costs out of the estate as between attorney and client.

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