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IN THE HIGH COURT OF CHANCERY

2, 4, 5 June 1841

Between:

SAUNDERS
v
VAUTIER

Richard Wright, by his will, gave and bequeathed to his executors and trustees thereinafter named, all the East India stock which should be standing in his name at the time of his death, upon trust to accumulate the interest and dividends which should accrue due thereon until Daniel Wright Vautier, the eldest son of his (the testator's) nephew, Daniel Vautier, should attain his age of twenty-five years, and then to pay or transfer the principal of such East India stock, together with such accumulated interest and dividends, unto the said Daniel Wright Vautier, his executors, administrators, or assigns absolutely; and the testator gave, devised, and bequeathed all his real estates, and all the residue of his personal estate whatsoever and wheresoever, to his executors and trustees thereinafter named, their heirs, executors, administrators, and assigns, upon trust to sell and convert into money all his said real and personal estates immediately after his decease, and to invest the produce arising therefrom in their names in the £3 per cent. consolidated Bank annuities, and to stand possessed thereof upon trust for the said Daniel Vautier and Susannah, his wife, and the survivor of them, during their respective lives, and from and after the decease of the survivor of them, upon trust for their children, equally, when and as they should, severally, being sons, attain the age of twenty-one years, or being daughters, attain that age or be married, with the consent of their trustees and guardians, and in the meantime to apply the interest and dividends of the respective shares of such children for their benefit, education, or maintenance; and in case any child should die before attaining a vested interest in the fund, then the testator directed that the share of the child so dying should go and survive to the others: and the testator nominated and appointed his friends John Saunders and Thomas Saunders his executors and trustees.

The testator died on the 21st of March 1832, at which time a sum of £2000 East India stock was standing in his name. The executors, having proved the will, left that sum standing in the testator's name, but invested the dividends on it, as they accrued, in the purchase of like stock in their own names.

Shortly after the testator's death, this suit was instituted by the executors against Susannah Vautier and her children (Daniel Vautier having died in the testator's lifetime), for the purpose of having the trusts of the will carried into execution under the direction of the Court;

and a decree was accordingly made, directing the usual accounts. A petition was afterwards presented on behalf of Daniel Wright Vautier, who was then a minor, praying the appointment of a guardian, and an allowance for his past and future maintenance: and, the usual reference having been directed, the Master, by his report, found, amongst other things, that the Petitioner's fortune consisted of the sum of £2277, 6s. 7d. East India stock, being the amount of the abovementioned sum of £2000, with the accumulations thereon since the testator's death, and of one-seventh share of the testator's residuary estate, which would be divisible on the death of the Petitioner's mother. He also found that the Petitioner had been educated and maintained, since the death of the testator, by his mother, and that she had properly expended in such maintenance the sum of £338, 2s., which he found ought to be paid to her by sale of a sufficient part of the £2277, 6s. 7d. East India stock; and he found that the sum of £100 per annum would be a proper sum to be allowed for the maintenance and education of the Petitioner for the time to come, during his minority, and that it should be paid out of the dividends of the East India stock.

By an order of the Master of the Rolls (Sir C. C. Pepys), dated the 25th of July 1835, that report was confirmed and carried into effect, and, in pursuance of that order, the trustees continued, during the minority of Daniel Wright Vautier, to pay the sum, of £100 out of the dividends of the stock for his maintenance.

Daniel Wright Vautier attained twenty-one in the month of March 1841, and, being then about to be married, he presented a petition to the Master of the Rolls, praying that the trustees might be ordered to transfer to him the East India stock, or that it might be referred to the Master to inquire whether it would be fit and proper that any and what part of the stock should be sold, and the produce thereof paid to the Petitioner, regard being had to his intended marriage, and for the purpose of establishing him in business.

Upon that petition coming on to be heard before the Master of the Rolls, his Lordship's attention was called to the order of the 25th of July 1835, whereupon he declined to deal with the question raised upon the petition, so long as that order remained; and it was, in consequence, arranged that the petition should stand over, for the purpose of enabling the other residuary legatees to present an appeal petition from that order to the Lord Chancellor.

An appeal of petition was accordingly presented, praying, simply, that the order of the 25th of July 1835 might be discharged or varied; and that petition now came on to be heard.

Mr. Richards and Mr. Dean, for the residuary legatees, contended that the order for maintenance out of this fund was erroneous, inasmuch as the legatee took no interest in it until he attained the age of twenty-five years: for, there being no gift but in the direction for payment on the legatee's attaining that age, it followed, according to the established rule, that the vesting of the legacy was postponed until that period, unless, from particular circumstances, a contrary intention could be collected. In this case, however, there were none of the indicia from which such an intention had usually been inferred. There was no direction in the will to give the legatee the interim enjoyment of the produce of the fund, nor even so much as a provision for maintenance out of it; and it had been held, that even the existence of such a provision afforded no presumption of an intention to vest the capital; *Leake v. Robinson* (2 Mer. 363, see p. 387). The accumulations were not, as in *Hanson v. Graham* (6 Ves. 239), directed to be made for the benefit of the legatee; nor was there any gift of them, any more than of the principal, except in the direction for payment. The gift was, in fact, precisely equivalent to a bequest of a sum of money, with interest, on the legatees attaining a

particular age, which had been held not to give a vested interest in the meantime; *Knight v. Knight* (2 S. & S. 490). The only circumstance in the present case which indicated an intention to vest the legacy, was the direction to pay to the legatee, "his executors, administrators, or assigns:" but these words could not be relied on, as they were merely the technical form of expressing an absolute interest.

They also cited *Batsford v. Kebbell* (3 Ves. 363), *Vawdry v. Geddes* (1 Russ. & Mylne, 203), *Judd v. Judd* (3 Sim. 525), and *Newman v. Newman* (10 Sim. 51), and they observed that the course adopted by the Master of the Rolls shewed that his Lordship considered that the order for maintenance was erroneous, or otherwise he would not have hesitated to order a transfer of the fund at once to the legatee.

THE LORD CHANCELLOR. I cannot recognise the principle that the existence of an erroneous order as to maintenance prevents the Court from making an order inconsistent with it, as to the principal fund. There was nothing to prevent the Master of the Rolls from disposing of the petition which was brought before him, notwithstanding that order. But, with respect to this petition, I do not see to what purpose I can deal with it. If the party were still a minor, and the payment of the maintenance under the order were going on, there might be a reason for applying to stop it for the future; but, by discharging that order, I should be making the trustees liable for the payments they have made for maintenance. The petition presented to the Master of the Rolls is not now before me, or, with the consent of the parties, I would dispose of it.

It was then arranged that a similar petition should be presented, without delay, to his Lordship, and that the argument should, in the meantime, proceed as if such petition were actually before the Court.

Mr. Wigram and Mr. Wood, for Daniel Wright Vautier, admitted the general principle, that where there was no gift but in the direction for payment at a certain time, the legacy was, in the meantime, contingent, unless a contrary intention appeared: but they insisted that the circumstance from which the Court was in the habit of inferring such intention, was not the direction that the legatee should have the interim enjoyment of the fund, but the necessity of separating the principal sum from the bulk of the estate, in order to carry into effect the provisions of the bequest. Wherever such necessity occurred, it was immaterial whether the occasion of it was an immediate gift of the produce of the funds to the legatee, or a gift of a fund to a trustee to improve for his benefit. In either case, it was the separation of the fund that destroyed the contingent nature of the bequest, and raised a presumption that an immediate and absolute gift was intended, unless that presumption were rebutted by a gift over in the event of the legatee dying under the prescribed age; *Vawdry v. Geddes* (1 Russ. & Mylne, 203). That principle was recognised in *Boddy v. Dawes* (1 Keen, 362), and it would be found to be the principle of all those cases in which a gift of this kind had been held to confer a vested interest; *Hanson v Graham* (6 Ves. 239), *Branstrom v. Wilkinson* (7 Ves. 421), *Lore v. L'Estrange* (5 Bro. P. C. 59), *Lane v. Goudge* (9 Ves. 225). The reasoning in *Batsford v. Kebbell* was not very intelligible; but, at all events, the ground of that decision, whether right or wrong, was peculiar to itself, viz., that the dividends of stock and the stock itself were distinct subject-matters of bequest; and if that were so, the gift of the dividends, until the party attained the age at which he was to receive the stock, did not involve an immediate separation of the stock from the bulk of the estate. They also cited *Boraston's case* (3 Rep. 19), *Manfield v. Dugard* (1 Eq. Cas. Abr. 195, pl. 4), *Doe v. Whitby* (1 Burr. 228), and relied on the limitation to "executors, administrators, or assigns," observing that the

legatee could have no "assigns" in the sense which that word was evidently intended to bear, unless the legacy vested before the time appointed for payment arrived.

Mr. Anderdon appeared for the trustees.

Mr. Richards, in reply, said that in all the cases which had been cited there was either an immediate gift of the interim produce of the fund to the legatee, or a trust to apply it for his benefit; and that the mere separation of the fund from the rest of the estate had never been treated as alone sufficient to give the legatee a present vested interest. Still less could it be so considered in this case, in which the trustees of the legacy were also executors and trustees of the will generally.

On the conclusion of the argument, THE LORD CHANCELLOR said that, from what had been stated, he must assume that the Master of the Rolls' impression was that the order for maintenance was erroneous.

Mr. Wigram said he understood that the Master of the Rolls, considering himself bound in point of form by that order, had expressed no opinion upon the merits.

June 4. THE LORD CHANCELLOR. I should not have thought this a case of any difficulty; but the form in which it came before me, namely, a rehearing of an order made by me at the Rolls, though not, as I at first understood, at the suggestion of the Master of the Rolls, has called upon me to give it my most careful attention. I have no recollection of the case, and have no means of knowing how far my judgment was exercised upon the construction of the will. I cannot, however, assume that the order was made without my having considered the state of the property as stated in the Master's report; as that would have been contrary to the course which I have always thought it my duty to adopt in such cases.

It is argued that the testator's great-nephew, Daniel Wright Vautier, does not take a vested interest in the East India stock before his age of twenty-five, because there is no gift but in the direction to transfer the stock to him at that age. But is that so? There is an immediate gift of the East India stock; it is to be separated from the estate and vested in trustees; and the question is whether the great-nephew is not the c*estui que trust* of that stock. It is immaterial that these trustees are also executors; they hold the East India stock as trustees, and that trust is, to accumulate the income till the great-nephew attains twenty-five, and then to transfer and pay the stock and accumulated interest to him, his executors, administrators, or assigns. There is no gift over; and the East India stock either belongs to the great-nephew, or will fall into the residue in the event of his dying under twenty-five. I am clearly of opinion that he is entitled to it. If the gift were within the rule, there would be circumstances to take it out of its operation. There is not only the gift of the intermediate interest, indicative, as Sir J. Leach observes in *Vawdry v. Geddes* (1 Russ. & Mylne, 203. See p. 208), of an intention to make an immediate gift, because, for the purpose of the interest, there must be an immediate separation of the legacy from the bulk of the estate; but a positive direction to separate the legacy from the estate, and to hold it upon trust for the legatee when he shall attain twenty-five. The decision in *Vawdry v. Geddes* and other cases, in which there were gifts over, cannot affect the present question. *Booth v. Booth* (4 Ves. 399) is certainly a strong case, and goes far beyond the present, and so does *Lore v. L'Estrange* (5 Bro. P. C. 59); and it is a decision of the House of Lords. That case has many points of resemblance to the present; and although Lord Rosslyn seems, in *Monkhouse v. Holme* (1 Bro. C. C. 298), to question the principle of that decision, Sir W. Grant, in *Hanson v. Graham* (6 Ves. 239. See p. 248),

justifies it upon grounds, most of which apply to this case, particularly that the fund was given to trustees till the legatee should attain a certain age, and that it should then be transferred to him; from which and other circumstances he thought it was to be inferred, that the fund was intended wholly for the benefit of the legatee, although the testator intended that the enjoyment of it should be postponed till his age of twenty-four. Such, I think, was clearly the intention of the gift in this case.

It was observed that the transfer is to be made to the great-nephew, his executors, administrators, or assigns. It is true that the addition of those words does not prevent the lapse of a legacy by the death of the legatee in the lifetime of the testator, but they are not to be overlooked, when the question is, whether the legacy became vested before the age specified because if it were necessary that the legatee should live till that age to be entitled to the legacy, then there would be no question about his representatives at that time.

I am therefore of opinion that the order of 1835 was right, and that the petition of rehearing must be dismissed, and with costs; which I should not have ordered if the Master of the Rolls had recommended the parties to adopt that proceeding upon a view of the merits of the case, but which I am now informed was not the case. The order for a transfer of the funds, upon the regular evidence of the legatee having attained twenty-one, will follow this decision upon the construction of the will.

June 5. On the following day, a petition having, in the meantime, been presented *pro forma* to the Lord Chancellor, in pursuance of the arrangement above mentioned, the matter was again spoken to, when

Mr. Anderdon asked for the costs of the trustees, both of that petition and of the similar petition which had been presented to the Master of the Rolls, submitting that although that petition was not before his Lordship, yet that the Petitioner might be put upon the terms of paying the costs of it, as the condition of his obtaining the order which he asked.

THE LORD CHANCELLOR said that he had no jurisdiction on the petition presented at the Rolls; but suggested to the Petitioner that he should consent to those costs being included in the present order, as he would otherwise have to pay the expense of another application to the Master of the Rolls for the purpose of recovering them; which suggestion was acceded to.

Mr. Richards then made a similar application for the costs of the residuary legatees, which was opposed by Mr. Wigram, on the ground that the residuary legatees stood in the situation of parties who had opposed a claim and failed: but

THE LORD CHANCELLOR said that, as the fund had not been carried over to the separate account of the Petitioner, and therefore could not have been obtained without serving the other parties in the cause, the residuary legatees were entitled to their costs; and, accordingly, his Lordship directed that the costs of all parties to that petition, and also, by consent, of the petition at Rolls, should be paid out of the fund.