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Present : Garvin J. and Jayewardene A.J.

JOSEPH *et al. v.* MAARTENSZ *et al.*

7—D. C. Colombo, 688.

Trust—Income of property to be applied towards the education and advancement in life of beneficiary—Period of benefit—Duration of lifetime—Interpretation.

Where a testator devised certain premises called Villa St. Leonards to his executors in trust to " pay and apply the rents after deduction for taxes and repairs as follows :—One-half of such rent to my sister-in-law M. W. during her life for her maintenance and to apply the other half of such rent towards the maintenance, education, and advancement in life of my nephew L. M. M. I empower my executor, if need be, to apply half the value of Villa St. Leonards towards the education and advancement in life of the said L. M. M. And in further trust, after the death of the said life renters, to sell the two properties and distribute the proceeds among the residuary legatees" :

And where the testator by a codicil directed that his niece J. J. should participate and have an equal one-third share, right, and intesest in the aforesaid house and rent,—

Held, that the bequest to J. J. did not give her a vested interest in the *corpus* of St. Leonards, which would pass on her death to her intestate heirs.

Held, further, that the benefit given to L. M. M. was not limited to his minority or to any other period than the duration of his life.

APPEAL from an order of the District Judge of Colombo.

Two questions regarding the interpretation of a clause in the will of the late Mr. C. L. Ferdinands arose for determination in this case. The material words of the clause are given in the

headnote. The first related to the duration of the benefit to L. M. M. and the second had reference to the nature of the interest vested in J. J. under the terms of the will. The learned District Judge held against the appellants who were the intestate heirs of J.J.

H. V. Perera (with *Nihal Gunesekere*), for appellant.—By the codicil Jennie Joseph is given an interest in the house in addition to an interest in the rent.

[JAYEWARDENE J. pointed out that it was an "equal share right, and interest" as the other two had.

It was then contended that Mr. Maartensz was not entitled to any rent after he was able to maintain himself. The rent was not to be "paid" to him but was to be "applied" for the purpose, indicating that its duration was to be only during his necessity.

[GARVIN J.—If that is correct, was the provision to cease immediately if the legatee came in for a large fortune at the age of 16 ?

There is a difference between giving a thing to be "applied" for a particular purpose and giving a thing to a person for a purpose. In the latter case the purpose does not limit its duration, in the former its duration is only as long as the purpose or need lasts or requires. It ceases when, in the opinion of the person who has "to apply," there is no longer any need.

Hayley, K.C. (with *N. K. Choksy*), for respondents, cited *Wilkins v. Jodrell*,[1] *Soames v. Martin*,[2] *Badham v. Mee*.[3]

These cases show that a provision for "maintenance" and "education" are not restricted only to minority but endure through life.

Such a provision is one for the "benefit" of the person and so endures through his life.

August 2, 1928. GARVIN J.—

The questions for determination upon this appeal involve the interpretation of certain clauses in the will of the late Mr. C. L. Ferdinands.

By the fifth clause of his will the testator devised certain premises in Flower road, then called St. Leonards and Villa St. Leonards and now called Yalta and St. Leonards, respectively, to his executors—

> "in trust to rent the same and after deducting from such rent a percentage to pay taxes and repairs, to pay the balance rent of St. Leonards to my sisters or the survivors or survivor of them for their maintenance during their lives, free from the debts and control of the husband of any of them, their own receipts being accepted in full

[1] *L. J. 49 Ch. D. 26.* [2] *(1839) 10 Sim. 287.*

[3] *(1830) 1 Russell and Mylne's Reports 631.*

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discharge, and such rents shall not be paid to them in anticipation, my intention being that the rents should be applied for their own maintenance. And to pay and apply the rents of Villa St. Leonards after the same deductions for taxes and repairs, as follows :—One half of such rent to my sister-in-law Maria Wendt during her life for her maintenance and to apply the other half of such rent towards the maintenance, education, and advancement in life of my nephew Lewis Matthew Maartensz, who has been under my care and protection for the last seven years. I empower my executor if need be to apply half the value of Villa St. Leonards towards the education and advancement in life of the said Lewis Matthew Maartensz. And in further trust, after the death of the said life renters to sell the said two properties and distribute the proceeds among those I have hereinafter appointed the residuary legatees of this will."

Clause 8 specifies those to whom the residue is bequeathed.

The will was executed on December 11, 1888. Some time later the testator made a codicil which bears May 2, 1891, which contains the following clause :—

" Whereas by the aforesaid will I made provision that the rent of my house Villa St. Leonards should be apportioned by the executor and paid to and for the benefit of Maria Wendt and Lewis Matthew Maartensz, and whereas I am desirous that my niece Jennie Joseph should participate and have an equal one-third share in the said provision, I do therefore give and devise to my said niece Jennie Joseph an equal share right and interest in the aforesaid house and rent thereof and desire that the bequest should be subject to the same condition and provision as are made applicable to the other two devisees."

Jennie Joseph died on September 8, 1919. After her death the proceeds of the one-third share of the rents of Villa St. Leonards continued to be paid in equal shares to the other beneficiaries, Maria Wendt and Lewis Matthew Maartensz.

The question was then raised as to whether they were right in so doing. A proceeding then took place which, by agreement of parties, was treated, when it reached this Court in appeal, as an application by the trustees for directions as to the administration of the trust in so far as it related to the one-third share of the rents which by the codicil of the testator were payable during her lifetime of Jennie Joseph. This Court decided in its judgment which will be found reported at page 481 of the 26th volume of the *New Law Reports* that upon a true interpretation of the will as modified

by the codicil there was a separate and distinct bequest of a specific one-third share of the rent to each of the devisees, and that on the death of Jennie Joseph her one-third share did not accrue to the other two but fell into the residue. Upon this determination the case went back for the ascertainment of the residuary legatees and the precise shares to which each would be entitled.

In the course of the steps taken in the Court below for this purpose certain of those who were noticed availed themselves of the opportunity to raise certain other questions relating to the administration of this trust.

It is unnecessary to consider at this stage whether, as contended in the Court below, the procedure adopted was regular, since counsel for the parties prefer that the substantial questions should be decided irrespective of any technical objection to the form of the proceeding.

We were invited to determine two questions: (1) whether Lewis Matthew Maartensz was only entitled to the benefit of the provision made by clause 5 of the last will until he attained the age of 21 or at the latest till he was appointed to the office of Crown Counsel and, as was contended, ceased to stand in need of education, maintenance, or provision for advancement in life; (2) whether the bequest of Jennie Joseph made in the codicil of the testator gave her a vested interest in the *corpus* of St. Leonards which at her death passed to her intestate heirs.

It was urged in support of the contention that the duration of Lewis Matthew Maartensz's interest was limited in the way suggested that in the case of all the other beneficiaries specified in clause 5 the bequest is said to be for their maintenance during their lives but in his case alone the executor is directed "to apply the other half share of such rents towards (his) maintenance, education, and advancement in life."

Now at the date of this disposition Mr. Maartensz was a boy of about 12 years of age and this circumstance in itself would explain the change in the phraseology. But the principal argument which was addressed to us was that a limitation to the duration of the benefit is imported by the words "maintenance, education, and advancement in life." It is to be noted that there are no words which expressly set a definite limit to the period of the beneficiaries' enjoyment, and the question we have to consider therefore is whether the duty imposed on the trustees to apply the other half, which by reason of the codicil was reduced to one-third of such rents, towards the "maintenance, education, and advancement in life of my nephew Lewis Matthew Maartensz" ceased at any time prior to the death of Lewis Matthew Maartensz, and, if so, when. For myself I have great difficulty in confining this provision to the

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minority of the beneficiary or to any other period than the duration of his life. There is nothing in the word "maintenance" which imports any such idea, nor indeed is any such limitation suggested by the word "education." There is no reason to suppose that the testator contemplated that the beneficiary's education would cease with his minority. As a matter of fact, education, even using the term in the limited sense of that education which precedes the time when one commences to enter upon a definite occupation of life often continues later than one's twenty-first year and it is conceivable that it may continue for very many years thereafter, nor is there any such indication of a time limit suggested by the words "advancement in life." If is, of course, conceivable that there may be benefits which are clearly and definitely limited to the point of time at which a person is expected to enter some profession or enter some occupation with a view to earning his livelihood, but there are no such words in this clause, nor indeed any words other than those to which I have referred. In the case of *Wilkins v. Jodrell*[1] a similar contention was urged in connection with a clause in a will whereby the testator gave to a woman an annuity of £100 and directed as follows:—"In the event of her death the annuity to continue to her children for their maintenance and education . . . ." It was urged that the words "maintenance and education" confined the gift to the minority. In the course of his judgment Hall V.C. reviewed the earlier decisions on this aspect of the case. He expressly dissented from the judgment of Wood V.C. in the case of *Gardner v. Barber*,[2] and following the case of *Soames v. Martin*[3] held that the words "maintenance or education" in such a provision, were it by way of trust or by way of gift, does not limit the duration of the provision to the minority of the beneficiary. The only difference between the circumstances of that case and the one now under consideration is that we have here the additional words "advancement in life," but, as I have already indicated, these words do not appear to me to import any limitation.

As to the second of these two points, the contention that Jennie Joseph took a vested interest in the *corpus* of St. Leonards transferable to her heirs does not appear to have been raised in the earlier proceeding to which I have referred, and it is a question whether it is open to the appellants, who were parties to that proceeding, to raise it in view of the decision that the share of the rents and profits paid to Jennie Joseph in terms of the will during her lifetime now formed part of the residuary estate of the testator and passed under clause 8 of his will to the residuary legatees mentioned therein. But the point itself presents no difficulty. The intention of the testator is clearly disclosed in the recitals where it refers to

[1] *(1879) 13 Ch. 564.* [2] *18 Jur. 508.*

[3] *10 Sim. 287.*

the provision made by his will that the rent of Villa St. Leonards should be apportioned by the executor and paid to and for the benefits of Maria Wendt and Lewis Matthew Maartensz and expressed his desire "that his niece Jennie Joseph" should participate and have an equal one-third share in the said provision. The actual words of the devise are—"I do therefore give and devise to my said niece Jennie Joseph an equal share right and interest in the aforesaid house and rent thereof and desire that the bequest shall be subject to the same conditions and provisions as are made applicable to the other two devisees." The word "equal" which applies to all three words "share, right, and interest" appear to me to imply equality, not merely of magnitude or quantity but in nature and quality.

The concluding words, that the bequest should be subject to the same condition and provision as are applicable to the other two devisees, clearly indicate that the provision in the last will by which the trustee is directed upon the death of the life renters to sell the two properties and distribute the proceeds amongst those appointed residuary legatees is applicable to the bequest made to Jennie Joseph. This is fatal to the contention that it was the intention of the testator to benefit Jennie Joseph and her intestate heirs to the exclusion of the residuary legatees so clearly indicated by him as the person amongst whom the proceeds of those two properties were to be distributed when they were ultimately sold in terms of his will. The language of the testator clearly and unambiguously shows that when admitting Jennie Joseph to the benefit of the provision made in clause 5 in respect of Villa St. Leonards he intended that in all respects that bequest should be similar to the bequest made by him to the other two beneficiaries.

The appeal is dismissed, with costs, which will be paid by the appellant.

In view of some supposed ambiguity in respect of the order for costs made by the learned District Judge in his order dated August 31, 1927, I direct, with the consent of parties, that that order should be regarded as an order on the three persons, William Arnold Joseph, John Joseph, and John Ferdinands Joseph, to pay the costs of the contention which took place on August 31, 1927, and any costs which may have been occasioned to the respondents on August 4, 1927, which was the date for which this matter was originally fixed.

JAYEWARDENE A.J.—

I agree, and wish to add that a provision for maintenance and education according to the more recent authorities is not limited to minority but creates a life interest. In *Soames v. Mortin*,[1] the

[1] *10 Sim. 287.*

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Vice-Chancellor (Sir L. Shadwell) remarked that all persons who have attained majority are not in a state in which they do not want education, and there is no period of life in which a person does not require maintenance; and in *William v. Papworth* [1] the Privy Council, *per* Lord Macnaghten, laid down that the provision for maintenance of adults is no more than a provision for their benefit.

Appeal dismissed.