[HIGH COURT OF AUSTRALIA.]

SIDLE . . . . . APPELLANT;
DEFENDANT,

AND

QUEENSLAND TRUSTEES LIMITED AND OTHERS . . . . . } RESPONDENTS.
PLAINTIFFS AND DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1915.

BRISBANE, *July* 29, 30; *Aug.* 2.

Isaacs, Gavan Duffy and Powers JJ.

Will—Construction—Vested interests in "sons" for life—Gift over—Meaning of "child or issue" of testator.

A testator devised and bequeathed his residuary estate to his two "sons" and to his trustees to convert and invest, and stand possessed of the "trust premises" upon certain trusts, the first of which was to divide the trust premises into two equal shares and to appropriate one to each of his "sons," and to pay the income of each share to the "son" to whom the share is appropriated during his life. The will also contained provisions for the benefit of the "children or remoter issue of such son," "from and after the death of each such son," and declared that "if there shall be no child or issue of mine who shall attain a vested interest in the trust premises" under the previous provisions, the trustees are to hold the residuary estate upon trust for certain nephews and nieces of the testator. The two sons (who were the only issue of the testator) survived him, but both of them died subsequently leaving no issue.

Held, that, reading the will as a whole, the word "child" did not include a son of the testator, but the words "child or issue of mine" were intended to refer to the children or remoter issue of the testator's sons, and that the sons took vested interests for life only; and that, therefore, there was no intestacy—the gift over to the nephews and nieces having become operative.

Decision of the Supreme Court of Queensland: *Re Sidle*, (1914) S.R. (Qd.), 215, affirmed.

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APPEAL from the Supreme Court of Queensland.

In an action brought by the Queensland Trustees Ltd. and John George McGregor, the trustees of the will of James Sidle, deceased, a special case was stated, by consent of the parties, for the opinion of the Supreme Court upon certain questions relating to the construction of that will. After making certain provisions in favour of his two "sons" and the "children or remoter issue of" each "such son," which are sufficiently indicated in the judgments hereunder, the testator, in his will, declared as follows:—"If there shall be no child or issue of mine who shall attain a vested interest in the trust premises under the trusts powers and provisoes hereinbefore declared and contained the trustees or trustee for the time being of this my will shall stand seised and possessed of my residuary estate and the rents profits income and annual produce thereof in trust for such of my nephews and nieces being the children of my brother Thomas Sidle of Colchester in the County of Essex and my deceased brother Harry Sidle living at the time of such default or failure of my issue and for such children or child then living of any such nephews and nieces of mine who may have previously died and if more than one as tenants in common in equal shares *per stirpes* so that my nephews and nieces being objects of the present trust may take in equal shares and the child or children being an object or objects of the present trust of any deceased nephew or niece of mine may take (in equal shares if more than one) the share which such nephew or niece would have taken respectively if living." The testator, who was a widower, left him surviving two sons (his only issue) —one of whom died a bachelor and intestate, and the other, William Harry Sidle, subsequently married and died without issue, having made a will leaving the whole of his property to his wife. The defendants to the action were Thomas Sidle and Carlton Hugh Sidle, nephews of the testator, as representatives of such of the children of the testator's brothers or their issue as might have a claim under his will; and Maude Augusta Sidle, the widow and executrix of the will of William Harry Sidle.

The questions submitted for the opinion of the Supreme Court were (*inter alia*):—

(1) Did the testator die intestate as to all or any part of his estate?

(2) What person or persons or class or classes of persons is or are entitled to the estate of the testator?

The Supreme Court answered the questions as follows:—(1) No. (2) The children of his brothers Thomas and Harry.—*Re Sidle* (1).

The defendant Maude Augusta Sidle now appealed to the High Court from the decision of the Supreme Court.

Stumm K.C. and *Woolcock*, for the appellant. The word "child" in the clause in question means child of the testator. Each of the testator's sons took a vested interest under the will, and on the death of the son who was a bachelor the surviving son took a vested interest in the whole estate. The children of the testator having taken a vested interest, the operation of the gift over was prevented, and there is an intestacy as to the corpus of the estate. [Counsel referred to *In re Edwards*; *Jones* v. *Jones* (2); *Leader* v. *Duffey* (3); and *Jarman on Wills*, 6th ed., p. 1656.]

Macgregor, for the respondents the Queensland Trustees Ltd. and John George McGregor, the trustees of the will.

Feez K.C., *Hart* and *Grove*, for the respondents Thomas Sidle and Carlton Hugh Sidle. By the word "child" is here meant a child of a son. The testator in his will designates his own children as "sons," and he refers to the "child of a son," which clearly means grandchild. Even if the word "child" means a son, the gift over still takes effect as the clause provides two alternatives: the gift over is to operate (1) if at any time a child of the testator shall not take a vested interest, or (2) if any issue of the testator shall not attain a vested interest, in the trust premises. "Trust premises" means corpus only. In the events which have happened the gift over has become operative, and there is no intestacy. [Counsel referred to *Cooke* v. *Mirehouse* (4).]

Stumm K.C., in reply.

Cur. adv. vult.

(1) (1914) S.R. (Qd.), 215.
(2) (1906) 1 Ch., 570, at p. 574.
(3) 13 App. Cas., 294, at p. 301.
(4) 34 Beav., 27.

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The following judgments were read :—

ISAACS and POWERS JJ. The question is as to the meaning and effect of the following declaration in the will :—" If there shall be no child or issue of mine who shall attain a vested interest in the trust premises under the trusts powers and provisoes hereinbefore declared and contained the trustees or trustee for the time being of my will shall stand seised and possessed of my residuary estate and the rents profits income and annual produce thereof in trust for such of my nephews and nieces being the children of my brother Thomas Sidle of Colchester in the County of Essex and my deceased brother Harry Sidle living at the time of such default or failure of my issue," &c.

Several contentions were advanced on both sides, but as we have come to a conclusion adverse to the appellant on one of them, it is unnecessary to say anything regarding the others. The first question that presents itself is as to the meaning of the word " child " where it first occurs. The word is not a term of art. It is a common English word, and, standing by itself, usually means a descendant in the first generation. The context may, however, extend or alter that meaning ; and the question is whether the context does alter it so as to limit its meaning to descendants after the first generation. Before coming to any conclusion on that point, we must read the will as a whole to see what the testator really meant.

Cases, as is constantly said, are of little use except for the principles they contain ; and the recorded application of those principles to a particular will can do no more than illustrate the principle, and prevent us from misunderstanding its meaning. But one universal principle is that the whole will must be read before finally arriving at an opinion as to the meaning of any controverted portion. You read the whole document through in the first place to ascertain whether it contains anything to affect the meaning of the passage in controversy. If it does not, you construe the passage by itself, having reference, of course, to the subject matter and relevant surrounding circumstances. If there is something affecting the meaning, you have to construe the controverted passage by the additional light of the other portion of

the document. If authority were wanting for this, it is found in the judgment of Lord *Halsbury* L.C. in *Higgins* v. *Dawson* (1).

It is not, and cannot be, disputed that there is very much in the will that may reasonably affect the meaning of the word "child," because it affects beyond question the meaning of the declaration as a whole.

We are of opinion that, reading the will as a whole, the word "child" in that declaration does not include a son of the testator. The frame of the will, its dominant intention, and the phraseology adopted by the testator, taken together, lead us to the belief that the testator by the words "no child or issue of mine" intended to refer to the children or remoter issue of his sons.

He first gave personal articles to his "two sons," so designating them. He then gave all his business personalty and chattels real to his "two sons," so designating them, but expressly excluded the freeholds. Then he devised and bequeathed his "residuary estate" to his "sons," so designating them, and to McGregor, as his trustees, upon trust to convert and invest, and stand possessed of the "trust premises" upon certain trusts. The first trust was to divide the trust premises into two equal shares, and appppropriate one to each of his "sons," so designating them, and to pay the income of each share to the "son," so designated, to whom the share is appropriated during his life. That ends the interest of the sons, except for the accruer provision, which, so far as the sons themselves are concerned, gives a sole surviving son the whole income for his life. All the benefits to the sons are given to them by the designation of "sons." Having limited his bounty to his sons for their lives, he turned to settle the disposition of his property "from and after the death" of each son, and selected as the next set of beneficiaries those whom he named as "the children or remoter issue of such son," in which phrase the two classes are mentioned with their separate designations. To these he gives a contingent interest to become vested only by testamentary appointment of the "son," or, failing that, then, in the case of the "children or a child" of the son, upon attaining twenty-one. A proviso follows that "no child of such son who

(1) (1902) A.C., 1, at p. 3.

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or whose issue shall take any part of the same trust premises under any appointment" shall take a share in the unappointed part without bringing the appointed part into hotchpot. He then declares that if there be "no child" living at his death or born afterwards of a "son"—still adhering to the distinctive appellations — who attains twenty-one, or gets an appointed share, then after that son's death and "such default or failure of his children as aforesaid" that son's share shall accrue to the other son on the same trusts as his original share. Then there is a proviso that, if one son dies in testator's lifetime, the will shall take effect as to the residuary estate as if the son had died immediately after testator's death—a proviso which was necessary to secure to the children of the predeceasing son the same benefits as were intended for them in case he survived.

So far the testator had disposed of his property first during the sons' lives, and then after their deaths, and the disposition was complete except in case the contingent interests of his own sons' children failed to vest.

Then follows the clause in dispute, which has been quoted, and which appears to us, both from its position and language, to be intended to apply to the state of things after the death of both sons, and to regulate the disposition of the corpus after the provision as to income alone has been exhausted.

The expression "no child or issue of mine" is preparatory to the expression "my nephews and nieces being the children of my brother Thomas" and "my deceased brother Harry," and the words "of mine" import the idea of direct lineal descent as contrasted with the collateral descent of his nephews and nieces. The word "child" is apparently a repetition of the same word previously used, and, as before, is used in conjunction with "issue," both referring to the contingent beneficiaries, the latter word in that conjunction being confined to remoter issue of the testator. Of these he says, "who shall attain a vested interest" —a phrase which, in itself, may not indicate contingency, but in its collocation in this will seems to point to the process commencing after the testator's death leading up to the vesting of interest. That phrase in that collocation, coupled with the sudden change of designation of the sons, would be a curious and unusual

way to indicate the sons' survival of the testator. These considerations, added to the fact that the specific designation of "son" is reverted to when "son" is intended and the term "child" always elsewhere employed for others than his sons, generally lead us to hold that "child" has, in the clause under discussion, the same meaning as previously in the will, and that the testator did not, in this solitary instance, and without any apparent reason, change his terminology and use for "sons" a word elsewhere appropriated to other descendants.

This gives effect to what we gather is the dominant intention of the testator, namely, to completely dispose of his property. The opposite view supposes that he was anxious to benefit his nephews and nieces as to the corpus after his own line was extinct without succeeding, but only conditionally that neither of his sons received any of the income during their lives. If either son survived the testator but for a day, then, although there was a total failure or default of issue, the supposition is that the testator intended that not only was the son to have no power of disposition, but that no collateral should receive any benefit. Where language is plain the alternative of intestacy is, of course, no reason for departing from its meaning—a testator is entitled to be as erratic as he chooses, within the law; but where the language is ambiguous, and the struggle is to ascertain the testator's real intention, an erratic intention is less likely to commend itself as probable than a natural and reasonable one.

By a road different from that taken by the learned Judges of the Supreme Court we arrive at the same conclusion, and think the appeal should be dismissed.

GAVAN DUFFY J. In this case I concur with the Supreme Court and with the other members of this Court in thinking that the testator clearly intended his nephews and nieces to take on failure of lineal descendants, and only in that case. I feel some difficulty in reading the words "child or issue of mine" as grandchild or more remote issue of mine, but in my opinion the appellant is in a dilemma. If the words are so read, I think she must fail for the reasons expressed in the judgment which has just been delivered, and if they are read in their natural meaning

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I think she must fail for the reasons expressed in the judgment of the Chief Justice and adopted by the other members of the Supreme Court.

I agree that the appeal should be dismissed.

Appeal dismissed. By consent, no costs against the appellant. Trustees to have costs out of the estate.

Solicitors, for the appellant, *Thynne & Macartney.*

Solicitors, for the respondents, *Atthow & McGregor*; *Walter R. Scott.*

R. G.

HIGH COURT OF AUSTRALIA.]

MANT AND OTHERS . . . . . APPELLANTS;

AND

THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX FOR QUEENSLAND } RESPONDENT.

H. C. OF A. 1915.

BRISBANE, *July* 30; *Aug.* 2.

Isaacs, Gavan Duffy and Powers JJ.

Land Tax—Assessment—Statutory deductions—Joint owners—Legal and equitable interests—Partnership—Business of graziers—Lands owned by individual partners—Mutual rights for partnership purposes—Land Tax Assessment Act 1910-1914 (*No.* 22 *of* 1910—*No.* 29 *of* 1914), *secs.* 2, 11, 27, 28, 35, 38, 42.

For the purpose of assessment of land tax, the personal right created by a contract of partnership in a grazing business allowing the stock of the firm to be agisted on lands owned severally by members of the partnership does not constitute the partners "joint owners" of such lands within the meaning of the *Land Tax Assessment Act* 1910-1914.

Consequently, the partners in such business are not liable to be assessed as joint owners of the whole of such lands under the provisions of the *Land Tax*