

THE PERPETUAL TRUSTEES EXECUTORS AND AGENCY CO. OF TASMANIA LTD.

V.

MITCHELL AND OTHERS.

JUDGMENT

MR JUSTICE RICH.

10.8 f 1942

May 19, 1942

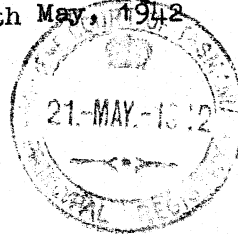
HIGH COURT OF AUSTRALIA.

PRINCIPAL REGISTRY.

MELBOURNE. 19th May, 1942

Memorandum for:-

The District Registrar,
High Court of Australia,
HOBART.



MITCHELL V. THE PERPETUAL TRUSTEES EXECUTORS AND
AGENCY COMPANY OF TASMANIA LIMITED AND OTHERS

Referring to your memorandum of 12th May 1942, I have to inform you that the abovementioned appeal came on for hearing this day before the Full Court consisting of Their Honours the Chief Justice and Justices Rich, Starke, McTierman and Williams.

Mr. Ham K.C. and Mr. T.W. Smith of Counsel appeared for the appellant, and Mr. S.C. Burbury and Mr. D.M. Little of Counsel for the respondent The Hobart Benevolent Society. There was no appearance for the other respondents, and His Honour the Chief Justice directed that an affidavit of service of the notice of appeal be filed.

Mr. Ham K.C. addressed the Court from 10.30 a.m. until 12 noon, when the Court intimated that it did not desire Mr. Burbury. His Honour the Chief Justice thereupon delivered oral reasons for judgment with which the other Justices agreed.

The order of the Court was as follows:-
"Appeal dismissed with costs."

The Court papers have been returned to you under separate cover.

A handwritten signature in cursive script, appearing to read 'U. Doherty'.

Deputy Registrar.

HIGH COURT OF AUSTRALIA.

PRINCIPAL REGISTRY,

MELBOURNE.

20th May, 1942

MEMORANDUM FOR:-

The District Registrar,
High Court of Australia,
Hobart

MITCHELL V. PERPETUAL TRUSTEES CO.

In continuation of my memorandum of yesterday's date, I forward a copy of the Reasons for Judgment herein delivered orally by His Honour Mr. Justice Rich.

W. Doherty
Deputy Registrar.

Please acknowledge receipt

THE PERPETUAL TRUSTEES EXECUTORS AND AGENCY CO. OF TASMANIA LIMITED.

V.

MITCHELL AND OTHERS.

Judgment.

Rich, J.

I agree. By a rule that has been adopted for the sake of general convenience the Court holds the personal estate to be reduced into possession within a year after the death of the testator. Upon that ground interest is payable upon legacies from that time unless some other period is fixed by the will. The basis of the rule is compensation to the legatees for delay in payment. Actual payment may, in many instances, be impracticable within that time: yet in legal contemplation the right to payment exists, and carried with it the right to interest until actual payment, Wood v. Penoyre, 13 Ves. 326, 333, 334. The sole question, then, is whether any particular time is fixed by the will for payment of these legacies, or whether it leaves them to be paid at the usual time. There is nothing in the will express or implied which postpones the time at which the legacies would be payable according to the general rule. ~~There~~

And

I know of no rule which prescribes that interest is not payable on legacies until the time when the trust estate is sufficient for payment of them. Otherwise legacies would be payable in dribblets as part of the trust estate was realised enabling payment to be made. Relevant examples of the general rule are to be found in Lord v. Lord, 2 Ch. at p. 789; re Whiteley, 26 T.L.R. 16, 17 and Walford v. Walford, 1912 A.C. 658. But Mr Ham relies on clause 7 of the will to exclude the operation of this general rule. I do not, however, think that the clause was intended to have or has this effect. It was inserted in the will to obviate any questions which might be raised with regard to the disposition of intermediate or interim "rents and yearly produce". These rents and produce fall into and become part of the fund designated "my trust moneys" and are applicable accordingly. The word "transmissible" is a technical word aptly describing the devolution of property by law. The notional conversion of the "unsold real estate" and its transmissibility as personal estate were intended by the draftsman, if there was no statutory provision in that behalf, to secure the passing to and vesting in the personal representatives of ^{that the} the testatrix of her real estate. I consider ~~the~~ legacies are, in

effect, general legacies payable out of residue, cf. re Yates, 96 L.T. 758, 761, to which the general rule applies.

I agree that the appeal should be dismissed.
