

New Jersey Court of Errors and Appeals.

BETWEEN

ANDREW OTTERSON, ET AL.,

Appellants,

and

SARAH M. HALL,

Respondent.

ON APPEAL.

PETITION.

10

To the Honorable, the Judges of the Court of Errors and Appeals of the State of New Jersey in the last resort in all causes as heretofore:

The humble petition of Andrew Otterson, Emily C. Otterson, William C. Otterson, Josephine C. Otterson, Henry L. Otterson, Elizabeth S. Otterson, Mary Conover, Harriet M. Otterson and Charles H. Otterson, appellants in the above stated cause, respectfully shows. 20

That Rebecca B. Otterson, (as Rebecca B. Haines) became by inheritance and by certain conveyances seized in fee of a valuable tract of land situate near Moorestown, New Jersey, estimated to be worth about \$40,000, the same being the lands in dispute in this cause; that she was married to James Otterson, Jr.,

October 1st, 1856; that a child was born of this marriage March 2d, 1858, and died March 29, 1858; that Rebecca B. Otterson, together with her husband, James Otterson, Jr., made a conveyance of the said premises to James E. Gowan, on February 25th, 1858, upon the following trusts:

10 First. To permit the said grantors to collect all the rents, &c., of the property, the same to be, during the lifetime of the said Rebecca, her individual property, to permit them to sell or incumber the said lands, or any parts thereof, and the proceeds of such sale or encumbrances to be the individual property of the said Rebecca.

20 Second. That the said Rebecca shall have power at any time to devise the same by will, or writing in the nature thereof, to take effect after the decease of the said James, as fully as though she were unmarried.

Third. If the said Rebecca should not make such will or appointment, then that the said James might devise the same by will, or writing in the nature thereof, subscribed in the presence of at least two witnesses.

Fourth. If neither the said James nor Rebecca should designate and appoint as aforesaid, that the said trustee should hold the same for the right heirs of Rebecca.

30 Provided that the said parties, or the survivor of them, may alter, change or revoke the said trusts, or any or all of them, and demand in writing a conveyance by said trustee, free of said trusts, to them or the survivor of them, his, her or their heirs and assigns.

Further provided, that the said James should not have power to defeat any testamentary devise which the said Rebecca might make.

And further providing for the appointment of a new trustee, with like powers in case of death, disability or refusal to act.

That the said Rebecca B. Otterson died intestate March 10, 1863, without having exercised the power of appointment reserved in the said deed.

James Otterson, Jr., thereupon procured the trustee, under the power mentioned in said deed, after the death of the said Rebecca, to convey to him the said premises in fee simple, freed from any trust whatever. This deed was dated December 31, 1863, and is recorded January 22, 1864, in Burlington County Clerk's Office, Book Y6, page 406, &c.

Under these deeds the said James Otterson, Jr., took visible possession of the said premises forthwith, and exercised dominion over the same until the time of his death, which occurred February 16, 1885. He died in-²⁰testate, and the appellants are his heirs-at-law, and as such claim the lands. The respondent is the sister of Rebecca Otterson, and as such claims the lands as her heir-at-law, insisting that the deeds aforesaid were procured through fraud or coercion, of which no proof was shown in the case.

James Otterson, Jr., exercised every right of ownership and dominion over the said property for over³⁰ twenty-two years before his death, which was fully known to the respondent. He died intestate, believing he was the owner of the said premises. He left no will. The respondent was aware of these facts, but made no claim to said lands until after his death, and the death of all witnesses able to testify to the original transaction. The Court of Chancery decreed that the

said conveyances should be set aside, because no affirmative proof was shown or produced that no fraud or coercion entered into the said conveyance, an impossibility at this late date, and this Court affirmed the said decree by a vote, as these petitioners are informed, of six to five.

The testimony of Sarah M. Hall, the complainant, the only witness called on her own behalf, was objected
 10 to at the hearing of the cause before the Vice Chancellor, and was overlooked in the argument of the case in this court, by reason whereof the more important question of the admissibility of complainant's testimony, we submit, should be argued and passed upon by the Court.

Your petitioners, therefore, pray that by reason of the omission to present the question of Mrs. Hall's competency as a witness, the large amount of prop-
 20 erty involved, the closeness of the said vote, the few Judges who sat and heard the said case, the fact that the questions presented were purely questions of law, that the majority of the Judges who voted for the affirmance of said decree were lay Judges, that your Honors will be pleased to grant unto your petitioners a rehearing upon the record, proofs and decree of the Court of Chancery and the opinion of the Vice Chancellor. And your petitioners, as in duty bound, will
 30 ever pray, &c.

PETER V. VOORHEES,

Sol. for and of Counsel with Petitioners.

I have read the above petition and conceive there is good cause for a rehearing.

GEORGE REYNOLDS,

Of Counsel with Petitioners.

ffir-
l or
pos-
the
ned,

ant,
ected
man-
case
tant
esti-
pon

1 of
all's
rop-
few
that
law,
the
your
ners
the
han-
will

s.
re is

rs.

