Probate & Estate Notices

Chiseldon

1878

Nash vs. Horton, Equity Case

WILLIAM HENRY NASH and ELIZABETH, his wife, v. MARTHA HORTON and her son YOUNG HORTON.

This was an equity case arising out of a will of Mr Horton, formerly of Chisledon, and whose widow and son were defendants of the suit, the prayer of the bill bring that the trust of the will might be carried into execution under the direction of the court; that an account in respect to certain cottages might be supplied, and the amount to be allowed for repairs decided.

Mr A. R. Poole, instructed by Mr E. M. Awdry (Pinniger Wood, and Awdry), appeared for the plaintiffs, and Mr Ormond for the defendants.

Mr Poole, addressing the Court said the plaintiffs were entitled under the will of the testator to receive the surplus rent of seven cottages, after 4s. a week had been paid to Martha Horton, the widow. There were trustees under the will, and as they refused to act, Martha Horton had taken out letters of of administration. Young Horton was Martha Horton's son, and after her death he was entitled to the cottages in fee, and the legacy to the granddaughter, Mrs Nash, would cease at that time. The will provided that the plaintiff, Elizabeth Nash, was to keep the cottages in repair, and pay poor rates, land tax, &c. Martha Horton and Young Horton had managed these cottages, had received the rents, and so on. But instead of keeping merely the 4s a week to which Martha was entitled, and paying the surplus of the rent to the plaintiffs, they had not paid any surplus to the plaintiffs whatever. Some time ago there was a dispute between the parties, and the result was a compromise was come to, under which matters were settled up to September , 1875, a sum of money was handed to the plaintiffs, and a release was executed between the parties up to September 1875. Since that date, Young Horton and his mother, Martha Horton, had continued in the management of the property, and had received the rents, and had paid nothing to the plaintiffs. Now the rents of the cottages amounted to £29 18s a year, and £10 a year, or 4s a week, was to be paid out of that to Martha Horton. That left £19 11s to be paid as surplus rent to the plaintiffs, and instead of paying that surplus over the defendants had retained everything. They sent in an account in which they charged in the year 1876, £19 13s 1½ d, for repairs, and £17 18s 10d, in 1877, and these sums were charged for repairs when between the death of the testator in 1869and September 1875 £40 odd had been expended for repairs. Now the contention of the plaintiffs was this; that the surplus rent over and above the £10 a year to which the widow was entitled, out under the will to be handed over to them, and that the words “management of houses” as mentioned in the will could not possibly mean anything more than that the defendants were to receive the rents, to be any directions in connection therewith, and to enforce the terms of the will. The plaintiffs were undoubtedly to keep the houses in repair and pay rates and taxes, and in other respects the widow was to have management of the houses for her life. If the plaintiffs received the surplus they were bound to carry out the condition of receiving it, viz., to keep the houses in repair. The defendants might give directions for repair, but certainly they had

no power to execute any repairs. But what the defendants had done was to take the law in their own hands: they got the income of the property, the mother took the £10, and the son got the remainder spent in repairs, for of course it was to his interest that the property when it came to him should be in a good state, and in point of fact he considerably improved it. Now, Young Horton had no right to do this, nor to repair at all. If the plaintiffs did not repair the cottages out of the surplus money, the defendants could have enforced the will against them.

He had read the will, and there was not the slightest ambiguity about the wording of it. The word management as applied to Martha Horton could not possibly mean that she was to retain the surplus, as the will directed she was to pay that that over to the plaintiffs, simply in order to see that the plaintiffs condition of receiving it, viz., keeping the houses in repair, was fulfilled.

His Honor would see that £40 having been spent in repairs between 1869 and 1875, £19 for repairs in 1876, and £17 for 1877 was altogether in excess of the repairs which the plaintiffs ought to be called upon to do, noting that the property was not worth £500, and only bought in £29 a year. The order which he would accede to was one of this kind: that the defendants should be allowed to repay themselves a fair sum for the repairs they had executed, that the registrar should say what that fair sum should be, and what sum should in future be allowed each year for repairs, and, that the balance of the surplus rent since 1875 be handed to the plaintiffs, and that for the future the surplus be paid to the plaintiffs. But of course the defendants had done wrong in this matter, and if they did not accede to their terms; he should ask his Honor for an account, and that all the sums of money they had received since 1875, over and above the £10 a year to be paid to the mother, should be paid to the plaintiffs together with the costs of this suit.

Mr Ormond, in reply, first submitted that Young Horton, being only agent to a trustee, was not properly joined as a party to this suit. His Honor said be was of course a proper party to the suit as the remainder man in fee.

Mr Ormond then said the whole question was a small one; whether or no there had been any excess of expense in repairs, and as to that his clients had offered to refer the matter to a builder or surveyor to determine. He asked his Honor to reserve the question of Mr. Young Horton's liability. His Honor said he must wait for the accounts. Mr Poole asked his Honor to decide at once, as a question of principle on the will, that the defendants were not entitled to retain the surplus rent every year. Mr Ormond opposed. His Honor said it was really a very small matter. Doubtless Martha Horton was an aged woman. Mr Poole: 83 years old, your Honor. His Honor: That shows what a very unsubstantial contest it is. Really you must arrange it. Mr Poole said if his Honor would say what was proper to be allowed for repairs, the plaintiffs would allow it, but not £19 a year. He would also ask his Honor to reserve the point on the construction of the will to be argued on the question of costs.

The learned gentlemen then withdrew to endeavour to come to an arrangement, but later on they returned, the compromise not having been effected. The case was then proceeded with. Mr. Poole arguing that his construction of the will was the correct one, viz., that the defendants were to manage the property and nothing else, and that the plaintiffs were to receive the surplus rent and do the repairs. Mr Ormond on the other side, submitted that there were words on the will repugnant one to the other, and that the will must be carried out with a view to outside circumstances, one of them being that the person directed to do the repairs was only 15 years old at the date of the will. The learned gentlemen having agreed the case at some length, his Honor said he saw no repugnance in the terms of the will: one party was to “manage” and the other to repair the property and receive the surplus rent. If that arrangement was capable of being carried out; and it could be; he must not depart from the expressed wishes of the testator. It Mr Ormond said it was awkward, and that the testator had better left the other way, he quite agreed with him, but he could go no father than that. He therefore must decide that the widow was trustee to let the cottages, receive the rents, and retain her annuity, and as to the surplus for the plaintiffs, but subject to a trust that they should do the repairs, &c. and he ordered that the amount should be taken by the registrar on this basis.

His Honor said he could not, as asked by Mr. Poole, order the surplus to be paid to the plaintiffs until the account to be deducted for repairs had be ascertained. The question of costs was reserved.

Mr Poole hoped the defendants would agree to a sum without incurring the trouble and expense of going before the registrar.

Swindon Advertiser and North Wilts Chronicle 25 May 1878