

1810.

Bowly
vs
Lammot

we stop at the words, "*but in case,*" the consequence would be, that a fee simple would vest in *George Lux* absolutely. The testator did not intend to give a fee simple to his son, but to modify it in such manner as to create an executory devise to his wife, on the happening of two contingencies; and to effect that intention, it is necessary to read on and complete the sentence, which is not complete until you come to the saving clause which excepts the *Rope-Walk*. The whole clause is one entire sentence, comprehending two dispositions connected with each other, and one arising out of the other; and the intention of the testator, as to the two objects of his bounty, his son and wife, cannot be ascertained until the sentence is finished. The exception or restriction is as operative at the end of the sentence as it would have been at the commencement, and the saving pervades the whole disposition, and extends to the first as well as the latter part of the clause. The saving does not relate to the estate created, but to the thing devised.

This construction is enforced by an expression in a subsequent part of his will, where the testator uses the term his *estate*, (evidently meaning *Chatsworth*) vesting in his son upon the death of his wife; importing thereby it could not vest in him during her life; and if it did not, the devise to *Bowly* must have been intended by the testator an immediate, and not a contingent devise of the *Rope-Walk* to *Bowly*, otherwise it would have vested in his son during the life of the wife.

There is no complete disposition in the clause, until the creation of the estate limited to the wife by way of executory devise. The insertion of the saving manifests plainly what the devise is to operate on, by excepting a particular part, the *Rope-Walk*, which the generality of the words would have included, and if it had been the intention of the testator to apply the contingency to *Bowly*, it is natural to suppose that he would have repeated the words, making the estate contingent immediately after the devise to him, which of itself vests an absolute fee.

BUCHANAN, J, dissented.

JUDGMENT REVERSED, AND PROCEDENDO AWARDED (a.)

(a) See the case of *Lammot's Heirs & Devisees vs. Bowly's Heirs*, on appeal from chancery, 6 *Harr. & Johns.* 500.