

OPINION AND DECREE

C. Harry Eyler, a resident of Thurmont, Frederick County, Maryland, died testate on the 15th day of November, 1940. He was survived by his widow, O. Ruth Eyler, and the following children: Virginia Ruth Eyler, Mabel Jane Diffenderfer, Joseph H. Eyler and Charles William Eyler, all of whom are at the present time married and sui juris.

At the time of the testate's death he was the owner of four valuable pieces of real estate located in Frederick County. By the terms of his last Will and Testament all his real estate was devied in trust to his widow for the period of her natural life. Upon her death it was directed that the said trust should terminate and his executors were authorized to sell the said real estate and to divide the proceeds arising therefrom among the testator's children or their heirs equally, share and share alike. Since the time of the death of the said C. Harry Eyler the said real estate had become a burden upon his widow in that it has not produced sufficient income to keep it in proper repair and to allow her a reasonable amount therefrom for her personal expenses. She, together with the children of the said C. Harry Eyler, has requested the Court to construe the will of the late C. Harry Eyler to declare the parties entitled to the real estate at this time, and also to appoint a suitable trustee to make sale of the said real estate and to report the same to the Court, provide for the payment of the income therefrom unto O. Ruth Eyler for and during the term of her natural life, and to further provide for a perservation of the corpus to be distributed at the time of the death of the life tenant. The portion of the will which the Court is requested to construe for the purpose of designating the persons in whom title to the real estate of the late C. Harry Eyler is now vested is the latter part of the fourth paragraph, in which the following words are used: "And divide the proceeds arising therefrom among the testator's children, or their heirs, equally, share and share alike".

It is apparent from the language used by the testator that title is now vested in O. Ruth Eyler, widow, as life tenant, and the children of the testator have vested remainders subject to being divested in favor of their heirs in the event that they should predecease the life tenant. This principle is supported by Miller, Construction of Wills, page 601; Shriver v. Shriver, 127 Md, 486, Reiff v. Strite, 54 Md. 298.

This is not a proceeding requesting a sale for the purpose of distributing, but a proceeding requesting authority to sell for the purpose of preseving the corpus and provide a reasonable income for the life tenant. The Legislature undoubtedly had situations of this nature in mind when Section 252 of Article 16 was added to the General Public Laws of the State of Maryland. By this Section a Court of Equity is empowered to decree the sale of real estate and to provided that the proceeds therefrom be invested under the supervision and direction of the Court in order that the same may inure to the benefit and advantage of the parties entitled thereto.

The widow and children have entered into a family agreement and all parties are in accord. The Court likewise feels that the best interests and advantage of the life tenant and remaindermen herein will be promited and protected by authorizing a sale of the real estate of the said late C. Harry Eyler, and will therefore pass its decree appointing a Trustee to carry out this purpose.

This cause standing ready for hearing and being submitted upon Bill and Answers, and the same having by the Court been read and considered, and it appearing that it would be to the best interests and advantage of the life tenant and remaindermen herein that a sale of the real estate set forth in these proceedings be decreed, and that the proceeds therefrom be invested to inure in a like manner as provided by the last Will and Testament of C. Harry Eyler, late of Frederick County, Maryland, deceased,