In re GOODS OF HUNT.

(L. R. 3 Prob. & Div. 250.)

Court of Probate. May 4, 1875.

Application to probate will.

Sarah Hunt and Ann Hunt, spinsters and sisters, residing together, in 1873 agreed to make their respective wills, the object being that, in the event of the death of either of them, the survivor should enjoy the joint property for life. Two wills were prepared in the handwriting of Sarah. The legacies in each were identical, save that where one gave a legacy to a certain charitable institution the other gave a similar legacy to another charitable institution; and in each case a life-interest was given to the survivor in the bulk of her sister's property. After the death of Sarah Hunt the two wills were found together, indorsed, "The wills of Sarah and Ann Hunt;" but on opening them it was discovered that each sister had executed the will prepared for the other. Most of the persons interested in an intestacy consented that the document executed by the deceased should be recognized as her will, and probate thereof be granted to the executors named in it; but some of the persons were abroad, and could not be communicated with.

Mr. Bayford, for the motion.

Sir J. HANNEN. I should be glad to give effect to the intentions of the testatrix, by granting probate of this instrument, if I could, but I must not allow myself to be led away from what appears to me to be very plain ground by such a desire. No doubt there has been an unfortunate blunder. The lady signed as her will something which in fact was not her will. If I were to attempt to read it as her will, it would lead to a variety of absurdities. She leaves to her sister, Sarah, that is, to herself, a life-interest in a portion of her property, and all the furniture, plate, etc., which she holds in part with herself. I am asked to treat this as a misdescription. If by accident a wrong name had been introduced, and it was clear what person was intended, the court would give effect to the instrument, providing the mistake could be corrected. But it would be contrary to truth in this case if I acted on such an assumption. If I were to put such a construction upon this will, I should be assuming, in order to do substantial justice, what every one who hears me would know is contrary to the fact. And no court ought to base its judgment on something wholly artificial, and contrary to what every one must see is the real state of the circumstances. It is enough to say that there has been an unfortunate blunder. A paper has been signed as the lady's will which, as it happens, if treated as her will, would to a great extent, although not entirely, carry out her wishes. But in one respect it does not, for by it a legacy is bequeathed to one charity which she intended to leave to another. As regards this legacy, it is suggested that it might be treated as if the deceased did not know and approve of that part of the will. But she did not in fact know and approve of any part of the contents of the paper as her will; for it is quite clear that if she had known of the contents she would not have signed it. I regret the blunder, but I cannot repair it. I reject the motion, but I allow the executors costs out of the estate.

GIFFORD v. DYER.

(2 R. I. 99.)

Supreme Court of Rhode Island. March Term, 1852.

Appeal from court of probate, Little Compton county.

Abigail Irish, who died December 6, 1850, made a will two days prior to her death, by which, after making small bequests to the children of Robin Gifford and to others, she gave the residue of her property to her brother-in-law, John Dyer, and her two nephews, Jesse and Alexander Dyer. Robin Gifford, her only child, was not mentioned in the will. The will was offered for probate by John Dyer, executor therein named, and was contested by Robin Gifford. It appeared in evidence that at the date of the will he had been absent from home, leaving a family, for 10 years, unheard from, and was generally considered dead, his estate having been administered upon. Testatrix had resided with John Dyer for some time previous to her death. The scrivener who drew the will testified as follows: "After I had read the will to her, she asked if it made any difference if she did not mention her son. I asked if she considered him living. She said she supposed he had been dead for years. She said, if it would make any difference, she would put his name in, 'for they will break the will if they can.' I think that was the expression she used. I think she said what she had given to her grandchildren was in lieu of what he would have, but am not positive. I think her son left in 1841, and was not heard of, to my knowledge. She was speaking of a home at Mr. Dyer's and said what she had given him would pay him well. She said her grandchildren had not been to see her while she was sick." The court of probate admitted the will, and Robin Gifford appealed.

Mr. Sheffield, for appellant. A. C. Greene, for appellee.

GREENE, C. J. It is very apparent in the present case that the testatrix would have made the same will had she known her son was living. She did not intend to give him anything if living. But if this were not apparent, and she had made the will under a mistake as to the supposed death of her son, this could not be shown dehors the will. The mistake must appear on the face of the will, and it must also appear what would have been the will of the testatrix but for the mistake. Thus, where the testator revokes a legacy, upon the mistaken supposition that the legatee is dead, and this appears on the face of the instrument of revocation, such revocation was held void. Campbell v. French, 3 Ves. 321.