

shares in Realty into Personality, so that the persons entitled to succeed would be the next of kin and not the heir.

2. The following points must be noted :

- (i) The order for sale must be within the jurisdiction of the Court
- (ii) It is immaterial whether the purpose for which it is sold will or will not exhaust the sale proceeds. The sale may be merely to pay cost. All the same, if the order is for sale, within the jurisdiction, it will effect conversion
- (iii) It is immaterial whether it is actually sold or is merely ordered to be sold. Order for sale is enough to effect conversion.
- (iv) Conversion takes place from the date of the order and not from the date of the sale.

3. There are two cases in which the order of the Court will not effect conversion for the purpose of inheritance.

- (i) Where the Court itself makes an order that such change in the nature of the property shall not affect its devolution on death, in which case the sale proceeds will go to the heir and not to the next-of-kin.
- (ii) Where the provision of some statute prohibits a change in the nature of the property from affecting its devolution *e.g.* Section 123 of the Lunacy Act, 1890, which provides that if the property of a lunatic is sold, the proceeds will go to persons entitled to them as though it was not sold.

(3) Conversion by operation of a Contract

1. When there is a binding contract to sell Realty, the Realty is treated as part of vendors Personality. Conversely, the interest of the purchaser is treated as Realty, even if he dies before completion.

2. This is, however, subject to one condition. That is, the contract must be one of which specific performance would be ordered by the Court—*34 Ch. D. 166*.

Mere notice to treat does not suffice to bring into operation the doctrine of conversion. There will be no conversion if the contract is abortive or unenforceable.

(4) Conversion under a contract to lease with an option to purchase

A leases certain property to *B* for seven years, giving him by the lease an option to purchase the property at a certain price during the term. *B* exercises his option

Three questions arise :

- (i) Does the exercise of the option effect a conversion ?
- (ii) Does it effect a conversion even if the option is exercised after the death of the Lessor?
- (iii) From what date does such conversion begin to operate ?

(i) Does the exercise of the option effect a conversion ?

In law, the option given is an offer to sell. The exercise of the option is an acceptance of the offer and when there is an acceptance of the offer, there is a contract. The exercise of the option by resulting in a contract effects a conversion. The answer to the first question is therefore in the affirmative.

(ii) Exercise of the option before the death of the Lessee and after the death of the Lessor.

1. If the Lessee exercises his option *before* the death of the Lessor, i.e., while he is alive, then there is conversion, because the offer conveyed by the option can be legally accepted and a binding contract can arise.

2. If the lessee exercises the option *after* the death, then, on principle, there ought not to be conversion, because there cannot be a contract. An offer cannot be accepted after the person, who make the offer, is dead.

But in *Lawes vs. Benett* (1785) 1 Cax 167, it was held that the exercise of the option, even *after* the lessor's death, is good for the purposes of conversion.

3. The rule in *Lawes vs. Benett* being anomalous, is confined in its operation. It is applied as between persons claiming under the lessor. But it is not made applicable as between lessor and lessee.

Illus. A leased certain property to B with an option to purchase. The premises were insured. They are destroyed by fire *before* the option is exercised by B. B, on exercising the option, cannot claim the insurance money as part of his purchase. That is claim as between A and B (1878) 7 Ch. D. 858, 10 Ch. D. App. 386.

(iii) From what date does conversion by contract begin to operate.

1. Conversion becomes operative from the moment when the contract is made.

2. In the case of option to purchase, conversion takes place as from the execution of the lease.

3. For the purposes of profits etc., the property remains real estate until the option is exercised, so that the rents and profits are taken by the heir entitled to Realty.

4. For the purposes of devolution, it is personality.

Conversion by direction of the owner.—Whether contained in a deed or a will.

1. Two things are necessary for conversion by deed or will :

(i) There must be a direction to sell or purchase Realty.

(ii) There must be some person in existence who can be said to have the right to insist upon the direction being carried out. Conversion is always for the benefit of some person. If there is no person to claim the benefit, then there need be no conversion.

2. In order to effect a conversion, the direction must be imperative. If direction is only *optional*, there will be no conversion and property will be treated as real or personal, according as to the actual condition in which it is found.

NOTE.—For a difference between a direction which is *really* optional and a direction which is *apparently* optional but really *imperative* See *Earlom vs. Saunders*—(1754) *Ambler's Reports* 241.

Direction, if it is optional, must be *express*. Otherwise it will always be held to be imperative.

3. Distinction must be made between direction to sell or purchase Realty and discretion as to the time at which sale or purchase shall be made :

(a) If the direction is imperative, mere fact that it is accompanied by discretion, will not prevent conversion having its effect.

(b) If the direction is imperative, the fact that those to whom the direction was given have failed to carry it out, will not prevent conversion having its effect.

4. Distinction must be made between a simple direction to sell or purchase and a direction, the execution of which, is made dependent *on the request or consent* of some other person.

In such a case, whether there will be conversion or not, rests upon the construction of the document :

(a) If the intention of the clause is to enable the person named to *enforce the obligation to convert*, then there will be conversion.

(b) If the intention of the clause is *to control the operation of the direction* by making it subject to application, then there will be no conversion until such application is made.

5. Distinction must be made between the *power to convert* and *direction to convert* :

(1892) 1 Ch. 279.

(1910) 1 Ch. 750.

A mere **power to convert** is not imperative direction and therefore, there **will be** no conversion, where there is mere power.

Illus. :

A borrowed £ 300 from B on a mortgage of A's property and gave B power of sale by the terms of which the surplus proceeds of sale were to be paid to A, his executors and administrators.

A died intestate, and after A's death B sold the estate and there were surplus sale proceeds. *To whom would the surplus go ?*

As this was not a direction to sell, the property would devolve according to its *actual* state at the death of A. At the death of A it was Realty, therefore, the heir was entitled to it. If the sale had taken place during the life-time of A, at the death of A it would be personality and would have, therefore, gone to the next-of-kin.

II. TIME FROM WHICH CONVERSION BY DIRECTION TAKES.

1. This varies according as the direction is contained in a will or in a deed.

2. If the direction is contained in a will, conversion will take place as from the death of the testator.

3. If the direction is contained in a deed, conversion will take place as from the date of the execution of the deed—notwithstand-

ing that the trust to sell or purchase is not to arise until after the, settlor's death.

III. EFFECT OF THE FAILURE OF OBJECTS FOR WHICH CONVERSION WAS DIRECTED IN A WILL OR DEED.

1. Two cases must be distinguished :

- (i) Cases of total failure.
- (ii) Cases of partial failure,

(i) Cases of total failure

1. Where there is a *total* failure of the objects *before* or *at the time* when the deed or will came into operation, or before the time at which the duty to convert is to arise, no conversion will take place at all and the property will remain as it was. The reason is that, there is no one who can insist upon the character of the property being altered.

2. The failure must be *prior* failure and not *subsequent* failure.

3. The rule regarding conversion is uniform in the case of total failure and there is no difference between the effects of a direction in a deed and a direction in a will.

(ii) Cases of partial failure

1. Where the purposes have only partially failed, then conversion is necessary to carry out such purposes as have not failed. Consequently the doctrine of conversion would operate and the representative entitled to take the property in the form in which it is directed to be converted.

2. It will be carried out to the extent necessary.

Illus. :

A devises Realty to trustees upon trust to sell and divide the sale proceeds between *B* and *C*. *B* predeceases A and *C* survives him. Here, sale is necessary in order that *C* may have what A intended to give him, i.e., money. *C* will take his share in money.

What would happen to the share of *B*?

It is money *in fact* and *ought* to go to the next-of-kin. But it will go to the heir because conversion to that extent was unnecessary. Heir takes it but as money.

Illus. :

A bequeaths personality to trustees to invest in the purchase of land for B and C. B predeceases A and C survives him. Here, purchase is necessary in order that C may have what A intended to give him, i.e., land. C will take his share in land.

What would happen to share of B ? It will go to the next-of-kin, because, conversion to that extent was unnecessary. But the next-of-kin will take it as land.

Reconversion

1. Reconversion means annulment or cancellation of prior conversion. It is a reversion or restoration of the notional state of the property to its actual state.

2. Reconversion can take place in two ways :

- (i) By act of parties,
- (ii) By operation of law.

(1) By act of parties

1. This occurs where a person has the right to choose between taking the property in its converted state or in its actual state.

2. Persons who have a right to make such an election and thereby reconvert property are :—

- (1) An absolute owner.
- (2) A owner of an undivided share—without the concurrence of the co-owner in the case of money to be converted into land but not in the case of land to be converted into money. This is because money is capable of apportionment while land is not.

Illus.—(1) Where money is to be invested into land in the interest of A and B as joint tenants. A can elect to reconvert without the concurrence of B.

(2) Ques :—Can a remainder man effect a reconversion by electing to take it in its actual state ? This is not clearly settled.

(3) This rule of reconversion by act of parties applies where the owner who has a right to elect and thereby to effect reconversion is subject to the limitation that he must not be under any disability.

Infants and *Lunatics* are persons under disability and cannot, therefore, reconvert. But the Court may direct reconversion on their behalf if it is beneficial to them.

Married woman can reconvert if the property belongs to her for her separate use. If it is not her separate property, then she can do so only with the consent of her husband.

(4) Evidence of election to reconvert—

- (i) express declaration of intention in that behalf;
- (ii) conduct amounting to election.

(2) Reconversion by Law

Where a person, who is under an obligation to convert property, is in possession of and absolutely entitled to the property after the obligation has ceased, the property is at home and reconverted without any act on his part. Thus—

A converts within 3 years after his marriage with B to invest £ 1,000 in the purchase of lands and settle them upon his wife B. B dies within a year of the marriage. Since the obligation to invest money in land and the right to require its investment are both vested in A, the obligation is discharged by operation of law and the money which was converted into land by the covenant is reconverted and passes to the next-of-kin.

Election

I. DISTINCTION BETWEEN ELECTION IN LAW AND ELECTION IN EQUITY.

(a) *Election in law* is connected with the choice of a party to repudiate a liability arising out of an unauthorized act or to ratify the act and accept the liability.

(b) *Election in Equity* is connected with the choice of a person to accept a gift which is subject to a burden or to reject the gift.

II. NECESSITY FOR THE EQUITABLE DOCTRINE OF ELECTION.

(i) What is the problem which the doctrine deals with
Nature of the Problem.

A gives his property to B by an instrument-deed or a will—and by the same instrument gives to C a property belonging to B.

What can B take under such an instrument ?

Here there are two gifts—

- (i) by A to B of A's property
- (ii) by A to C of B's property

The gift to *B* of *A*'s property is a valid gift, because *A* is the owner of the property gifted away. The gift to *C* of *B*'s property by *A* is invalid, because it is not authorized by *B*.

Question is, can *B* take the gift from *A* of *A*'s property and repudiate the gift of his property by *A* to *C*? It is this problem with which the doctrine of Election deals.

(ii) The doctrine of Election says that the gift to *B* shall take effect only if *B* elects to permit the gift to *C* also to take effect.

III. THE PRINCIPLE OF THE RULE.

When a person makes a gift of this sort, equity presumes that in such a gift there is an implied condition that he who accepts a benefit under an instrument must adopt the whole of it, conforming to all its provisions, and renouncing every right inconsistent with it.

(iii) Courses open to a person called upon to elect.

(A) Two courses are open to a person who is called upon to make an election.

- (1) *B* may allow *C* to take his (*B*'s) property and himself take *A*'s property.
- (2) *B* may take *A*'s property and not allow *C* to take his (*B*'s) property but give him compensation to the extent required to satisfy *C*.

Illus. :

A gives to *B* a family estate belonging to *C* worth £ 20,000 and by the same instrument gives to *C* a legacy of £ 30,000 of his (*A*'s) property. *C* can do either of the two things,

- (i) allow *B* to take the family estate *or*
- (ii) keep the family estate and give *B* £ 20,000.

(B) The former course is called *taking under the instrument*. The latter is called *taking against the instrument*. The following points must be noted in connection with these two modes of Election :

(i) Election against the instrument is allowed in Equity only where the gift is made upon an *implied* condition that the donee shall part with his own property. Where the gift is made upon an *express* condition that the donee shall part with his own property. Equity will not allow Election against the instrument. The donee would take nothing if he refused to comply with the condition.

(ii) No question of compensation arises when a person elects under the instrument.

(iii) Election against the instrument where it is permitted—does not involve a forfeiture of the whole of the legacy but only of a part sufficient for compensation.

IV. CONDITIONS FOR THE APPLICATION OF THE DOCTRINE

(1) The donor must have given the property of the donee to a third person.

(2) The donor must have by the same instrument given his own property to the donee. To this the following must be added.

(3) The property *given to* the donee must be such that it can be used to compensate the third person.

(4) The property of the donee must be alienable.

Note.—The donor will be deemed to be disposing of such interest as he may have in the property and no more.

V. SOME CASES WHICH MUST BE DISTINGUISHED FROM CASES OF ELECTION

(1) Cases of *two* gifts to one person

In such cases the doctrine of election does not apply. They are cases of gifts of his own property.

Here the donee may accept the one that is beneficial and reject the one that is *onerous*—unless the intention of the donor was that the acceptance of the *onerous* was a condition for the grant of the beneficial.

2. Case of *two* properties in one gift.—One beneficial, the other onerous.

The beneficiary must take both or neither unless an intention appears to allow him to take the one without the other.

VI. CONCLUSION

(1) Conversion and election are doctrines which illustrate the maxim of Equity—Equity looks to intention.

(2) That being so there would be no election if there was no intention on the part of the donor to put the donee to election.

I. Performance

1. *The problem* :—A covenants with B to do a certain act. A does an act which can wholly or partly effects the same purpose *i.e.* available for the discharge of the obligation arising under the covenant but does not relate the act to the covenant. The question is *how is this act to be construed* ? Is it to be construed that it is an independent *act* quite unconnected with the covenant or is it to be construed that the intention of A in doing this *act* was to perform the obligation. The answer of equity is that the *act* must be treated as being intended to perform the obligation under the covenant.

2. *Principle* :—The principle underlying the doctrine of Performance is that, equity presumes that every man has an *intention* to perform his obligation and when he does an *act* which is similar to the one he promised to do, then equity gives effect to that intention.

3. *The difficulties that would occur if this principle was not recognized.*

Illus :

A covenanted on his marriage to purchase lands of the value of £200 a year and to settle them for the jointure of his wife and to the first and other sons of the marriage in fail.

A purchased lands of that value but made no settlement, so that, on his death the lands descended to his eldest son.

The eldest son brought a bill in equity founded on his father's marriage-articles to have land purchased out of the personal estate of the father of the value of £ 200 a year and settled to the uses in the marriage-articles. But for the doctrine of *performance* the man would get both.

II. The cases in which the questions of Performance arise fall into classes :

(i) Where there is a covenant to purchase and settle lands, and a purchase is in fact made.

(ii) Where there is a covenant to leave personality to an individual and the covenantor dies intestate and the property thereby comes in fact to that individual.

III. Cases arising under the First Class

(i) *Illus*, already given.

Points to be noted.

(i) Where the lands purchased are of less value than, the lands covenanted for, they will be considered as purchased in part performance of the contract.

(ii) Where the covenant points to a future purchase of lands, lands of which the covenantor is already ceased at the time of the covenant, are not to be taken in part performance.

(iii) Property of a different nature from that covenanted to be purchased by the covenantor, is not subject to the doctrine of Performance.

IV. Cases that fall under the second class

(i) Covenant is to leave certain money.

A covenantor previously to his marriage to leave to his wife £620. He married and died intestate. His wife's share under the intestacy was less than £ 620.

The wife sued for the performance of the covenant. The question was, having received £ 620 on intestacy, was it not a performance of the covenant. It was *held* that it was, so that the widow could not claim her share on intestacy and £ 620 over and above as a debt under the covenant.

(2) In this case, the covenant was wholly performed. But even if the amount received was less than the amount due under the covenant, the doctrine of performance would apply and the covenant would have been held to be performed *pro tanto*.

(3) Two points to be noted :

(i) Where the covenantor's death occurs at or before the time when the obligation accrues, there is performance.

(ii) Where the covenantor's death occurs after the obligation has *accrued due*, there is no performance.

Satisfaction

I. *Problem*.—A is under an obligation to B. A makes a gift to B. The Question is : Is the gift to B to be taken as a gift or is the gift to B to be taken as satisfaction of A's obligation to B ?

II. There is a similarity between satisfaction and performance. There are fundamental distinctions between the two.

(1) In performance, the act done is available for the discharge of the obligation, but is not related in specific terms to the obligee. In satisfaction, it is related to the obligee but not in discharge of the obligation.

(2) In performance, whether the covenant has been performed depends, not upon the intention but, upon whether that has been done which was agreed to be done. The question, whether a gift satisfies an obligation, depends upon the intention of the donor.

(3) If an obligation has been performed-according to its terms, the obligor is discharged. If an obligor makes a gift by will in satisfaction of his liability, it rests with the obligee either to accept the gift or decline it. If he accepts it, he loses the right to enforce his obligation, if he declines it, he retains his original rights.

II. Intention is that, the gift is in satisfaction of the prior obligation.

III. Cases in which the question of satisfaction arises fall into two classes:—

(i) Cases in which the prior obligation arises from an act of bounty.

(ii) Cases in which the prior obligation is of the nature of a debt.

IV. Class of cases in which the prior obligation arises from an act of bounty.

In this class fall two kinds of cases—

(A) Satisfaction of legacies by portion.

(B) Satisfaction of portions by legacies.

(A) *Satisfaction of legacies by portion*

Portion—That part of a person's estate which is given or left to a child.

Illus.:

A has three sons B, C, D. He makes a will and in that will gives a legacy to each of his sons. Subsequently to the making of his will, A makes an advancement of a certain sum of money.

2. Here, there is a legacy and afterwards a portion. Are they cumulative or are they alternative. Is the child which has got a portion also entitled to get the legacy? Or is the claim for legacy satisfied by the subsequent portion given by the father?

3. The answer of equity is that, a child cannot get both, legacy and a portion. The claim for legacy shall be held to be satisfied by the subsequent grant of the portion. This is called the rule against *double portions*.

II. *Satisfaction of Portion by Legacies*

1. This is the converse of the first. In the first class of cases, there is first legacy then a portion. In the second, there is a portion first and then there is a legacy.

2. In the former case, the question was whether a legacy by will was satisfied by a subsequent portion. In this, the question is whether the obligation to give a portion is satisfied by a subsequent legacy.

3. The answer here is the same as in the former case. The same rule against double portion applies. So that a portion will be satisfied by a legacy.

4. When the will precedes the settlement, it is only necessary to read the settlement as if the person making the provision had said, "I mean this to be in lien of what I have given by my will".

But if the settlement precedes the will, the testator must be understood as saying, "I give this in lien of what I am already bound to give, if those to whom I am so bound, will accept it".

5. The same rule applies in the case of a portion followed by a portion.

II. *Limitations on the rule of double portions*

1. The rule does not apply :

(1) In the case of legacy and a portion—where the legacy is *expressed* to be given for a particular purpose and the portion subsequently advanced is for the same purpose.

(2) In the case of portion and legacy, and in the case of portion and portion—where the property is actually transferred to the child and then a provision is made either by way of a legacy or portion—in short it applies only where the first portion is only a debt.

(3) Where the person, who makes the provision is the parent or a person *in loco parentis*— If, therefore, a person gives a legacy to a stranger and then makes a settlement on the stranger of *vice versa*, the stranger can take both, the rule against double portion does not apply to him:

(i) An illegitimate child is a stranger;

(ii) a grand child is also a stranger:

(iii) a stranger cannot take advantage of the satisfaction of a child's share.

III. *Cases of two Legacies given by the same will or by a will and Codial.*

1. Question is whether the second Legacy is intended to be additional to the first or to be merely repetition.

2. The leading case is *Hooby vs. Hatton*, 1 Bro. C. C. 390 N.

3. Two class of cases to be considered separately—

(1) Where the subject-matter of the legacy is a thing.

(2) Where the subject-matter of legacy is money.

4. *Where the subject-matter of the Legacy is a thing*, Rule : Where the same thing is given twice—not additional but repetition.

5. *Where the legacies are pecuniary legacies :*

(1) The rule varies according as the gifts are contained in the same instrument or in different instruments.

(2) Two pecuniary legacies in the *same* instrument.

Rule:

(i) If equal—repetition.

(ii) If unequal—cumulative.

3. Two pecuniary legacies in *different* instrument.

Rule.—They are cumulative.

Exception.—If *same* motive is expressed for both gifts and the *same* sums are given—then repetition.

B. Cases in which the prior obligation is of the nature of a debt.

1. Cases may be divided into two classes—

(i) Satisfaction of debt by a Legacy.

(ii) Satisfaction of debt by a portion.

(i) *Satisfaction of debt by a Legacy.*

(1) This case arises where a debtor, without taking notice of the debt bequeathes a sum by way of legacy to his creditor. Question is : Is the legacy to be taken as satisfying the debt or is the creditor entitled to the legacy and also the debt ?

(2) *Rule.*—That the legacy shall be taken as satisfying the debt.

(3) *Limitation on the Rule.*—The rule does not apply in the following cases—

(i) Where the legacy is of lesser amount than the debt—no satisfaction, even *protanto*.

(ii) Where the legacy is given upon a contingency.

(iii) Where the legacy is of an uncertain amount— *e.g.* residue.

(iv) Where the time fixed for payment of the legacy is different from that at which the debt becomes due—so as to be equally advantageous to the creditor.

(v) Where the subject-matter of the legacy differs from the debt, *e.g.* land.

(ii) *Satisfaction of debt by Portion.*

(1) Such a case arises where the father becomes indebted to his child and then advances a portion to him in his lifetime. The Question is : Can the child claim both—the debt as well as the portion ? Or Is the debt satisfied by the portion ?

(2) *Rule.*—Debt is satisfied by the portion.

(3) This rule is subject to the same limitations.

V. Difference between Performance and Satisfaction.

Further notes are not available—ed.)

