SUPREME COURT REVERSES JUDGE SLACK AND DECIDES TRUST CLAUSE OF FAIR WILL VALID

Children Placed in Bad Position by Terms of the Decision.

May Reopen Negotiations With Mrs. Craven-Fair for the Pencil Will.

FOUR Justices of the Supreme Court have decided that a trust to convey after the termination of lives in being is not contrary to law, and "the last will and testament" of the late Senator James G. Fair has been sustained in its entirety. Accompanied by that "sickly green light of despair that accompanies the work of lyddite in action," this decision fell like a bomb among the children of the dead millionaire late yesterday afternoon. Its falling almost took the breath of heirs and counsel alike, for with the word of the court millions—about ten of them—passed from the hands of the children and made up a fund from which three trustees will wax fat while doling out accumulated interest to those the late Senator willed should share it during the rest of their days on earth.

Children Surprised.

A condition of affairs entirely unexpected now faces the three children of the late Senator Fair—Theresa A. Oelrichs, Virginia Vanderbilt and Charles L. Fair. For some time past they have stood together combating the claims of Mrs. Nettie R. Craven-Fair in the hope that the decision rendered by Judge Slack declaring the trust clause of the admitted will invalid would be sustained by the higher tribunal and that a decree of distribution under such a decision would leave them masters of the situation—the adjusters of millions—and in a position to dictate terms to Mrs. Craven-Fair to suit their own convenience, or to carry on the litigation until she tired of the unequal struggle and retired from the field. Most of the millions of the late Senator Fair are now, however, the trust property of W. S. Goodfellow, James S. Angus and Thomas G. Crothers, and toward their hands the children must stretch hands for their allotted income unless the Supreme Court reverses itself and finds that it erred when it upheld the will of the dead.

The Pencil Will Again.

A document which has flitted like a specter throughout the litigation over the estate of the dead millionaire since the filing of the first pleading and which is known as the "pencil will," has again been made prominent by the decision sustaining the trust clause in the will of September 21, 1894. When the attempt was first made to probate the trust will it is said that decedent's children, especially Charles L. Fair, hailed the advent of the so-called pencil will, executed September 24, 1894, presented by Mrs. Craven-Fair, with delight. If acknowledged this will would obviate the litigation over the trust clause, but again it would establish the genuineness of the pencil deeds held by Mrs. Craven-Fair, which Judge Slack subsequently declared invalid. This pencil will was offered for probate, but after weary perigrinations finally found a resting place in the vaults of the County Clerk's office. The question that is now being asked is whether or not this will will be again drawn forth and tossed into the boiling pot of litigation with the consent of the children. Various legal objections confront its presentation in view of the decision of the Supreme Court sustaining the trust will, but it is the consensus of opinion that the children will do something desperate rather than lose control of the bulk of the estate accumulated by their dead parent after years of toil and speculation.

Two decisions were handed down in the Supreme Court yesterday on the trust clause of the Fair will. The prevailing opinion, sustaining the trust clause, was written by Justice Harrison and concurred in by Justices Temple and Henshaw. Justice Beatty wrote a concurring opinion. Another opinion, dissenting from the views expressed in the prevailing opinion, was written by Justice McFarland and concurred in by Justice Van Dyke. Justice Garoutte also filed a dissenting opinion. These decisions, in part, follow:

The appeals in the above entitled causes involve the validity of certain provisions in the will of the late Senator James G. Fair and present the same questions for determination and have been submitted together upon the same briefs and oral arguments. The first case presents appeals taken from a decree of partial distribution made in the estate of the decedent at the instance of the respondents and will be first considered.

Fair's Trust Provision.

XV. "All the rest, residue and remainder of my estate, property and effects, real, personal and mixed, whatsoever and wheresoever situated, I give, devise and bequeath unto my trustees hereinafter named, and to the survivors of them and to their successors in office, in trust for the following uses and purposes, that is to say:

"To have and to hold the same in trust during the lives of my daughters, Theresa A. Oelrichs and Virginia Fair, and of my son, Charles L. Fair, and during the life of the survivor of them, and upon the death of such survivor to transfer and convey to the children or descendants of my said daughter, Theresa, the one-fourth part of said trust property and estate, and to the children or descendants of my said daughter Virginia, the one-fourth part of said trust property and estate, and the remaining one-half of said trust property and estate to transfer and convey in equal shares to my brothers and sisters and to the children of any deceased brother or sister by right of representation. (The language of this clause is taken from the Civil Code of the State of California, section 1366, subdivision 3, as it now exists, and shall bear the same construction as said subdivision of said section, subject, however, to the provisions of paragraph XVI of this will.) In case either of my daughters die, leaving no children or descendants, the one-fourth part of said trust property and estate herein directed to be transferred and conveyed to her children or descendants shall be transferred and conveyed to the children or descendants of my other daughter; and if there be none the same shall be transferred and conveyed to my brothers and sisters and to the children of any deceased brother or sister by right of representation, as aforesaid.

"In trust, further, during the life or lives of my said daughter and son, and the survivor of them, to hold, manage and control the said trust property and estate, and monthly to pay over the net income derived therefrom to my said daughters and son in equal proportions; and upon the death of either of my said daughters to pay over the one-third of said net income to which she, if living, would be entitled, to her children or descendants, if any there be; otherwise to my surviving daughter; and upon the death, during the life of my said son, of said surviving daughter, leaving children or descendants, then to her said children or descendants; and if she leave no children or descendants, then said portion of said net income to become a part of the rest and residue of my estate, and to be disposed of as such under the provisions of this will; and upon the death of my said son to pay over the one-third of said net income to which he, if living, would be entitled to my two said daughters, in equal proportions, or to the survivor of them."

Claims of the Litigants.

The ground upon which the Superior Court held the trust created by the will to be invalid, and which is maintained by the respondent herein, is that it contravenes the provisions of section 857, Civil Code, in that it authorizes the trustees, upon the death of the last surviving child of the testator, to transfer and convey the trust property to the persons therein designated. The court further held that this trust was so inseparably connected with the otherwise valid trust to receive the income of the property and apply the same to the use of the children of the testator during their lifetime, that, in view of the legal consequences flowing from its invalidity, it could not be presumed that the testator intended that the latter trust should be effective. It therefore held that the entire trust was invalid and that the testator had died intestate as to real property described in the complaint. The appellants concede that a trust created merely for the purpose of conveying real property to another is unauthorized, but claim that the provision in the will of Senator Fair that upon the death of his last surviving child the trustees shall transfer and convey the trust estate to the persons therein designated, was not one of the "purposes" for which he created the trust; that the trust created by the will is an executed trust; that the trustees have only an estate in the property pur auter vie, which will terminate at the death of the last surviving child; that at the death of the testator the persons to whom he directed the property to be transferred and conveyed were vested with a remainder in his estate which will vest in possession at the death of his last surviving child, and that the estate which will then be vested in them will neither require nor admit a conveyance from the trustees for the purpose of clothing them with any interest in the property.

Judgment of the Court.

It is the opinion of the court, after viewing the authorities presented, that the will does not suspend the power of alienation for a longer period than during the lives of persons in being at the death of the testator. The fact that a child of either of the testator's daughters, or of either of his brothers or sisters may be en ventre sa mere at the death of his last surviving child, will not have this effect. Such fact cannot be invoked to impair the validity of the will. It is only the power of alienation which the statute forbids to be suspended, and this power is not suspended by reason of any difficulty or inconvenience that may attend its exercise. The suspension of alienation which is aimed at by the statute is such as is caused by the instrument creating the estate, and not such as naturally arises from some disability on the part of the person in whom the estate is vested, such as infancy or other incapacity, or from any other cause outside of the instrument.

The provision in this section excluding from determination in such action all questions concerning the validity of any devise or trust contained in a will or instrument purporting to be a will, which under the constitution "belong exclusively to the probate jurisdiction," presents for construction the provision in section 5 of article VI of the constitution, by which the Superior Court is given jurisdiction of all matters of probate, and what is included under "matters of probate"; and to what extent the jurisdiction thus given to the Superior Court is exclusive of the jurisdiction given to it by the same section "in all cases in equity." These questions have not been discussed by counsel, and, as the conclusion which we have reached in reference to the validity of the trust clause in the will necessitates a reversal of the judgment herein, it is unnecessary for us to determine whether the provisions of section 738, as thus amended, were available to the plaintiff for the purpose of maintaining his action. We do not wish to be understood as expressing any opinion upon these points, and allude to the matter only in order that it may not be inferred from our silence thereon that we hold the action to be authorized by that section.

The decree of distribution in the estate of Fair is reversed. The judgment and order denying a new trial in the case of Fair vs. Angus are also reversed.

The theory of the Justices dissenting from the above decision is contained in the dissenting opinion written by Justice Garoutte, which follows:

I concur generally in the views of Mr. Justice McFarland. Upon careful examination I am satisfied it will be found that a very large majority of the cases cited by Mr. Justice Harrison in his opinion, to the point that the words "transfer and convey" should be construed as words of devise, have arisen under statutes quite dissimilar to the statutes of this State; and generally in jurisdictions where the principles of law pertaining to "powers in trust to convey" are recognized and approved. It is sufficient to say we have no like principles of law as to "powers" in this State. As I read the opinion of Mr. Justice Harrison, it goes to the length of holding that a transfer and conveyance from the trustees to the beneficiaries is not demanded by the terms of the will. I believe such contradiction of the instrument does violence to the meaning and use of the simplest and most ordinary words. If words mean anything, if a party's intentions are to be determined by his words, it must be held that James G. Fair intended that the trustees should pass the title to the beneficiaries by deed. If the words here used do not express that purpose, then it cannot be expressed in words. I know no word in the English vocabulary the use of which in this will would add point, force and clearness to the words "transfer and convey." If the words "transfer and convey" were used in a power of attorney there would be no trouble in giving them the usual and ordinary meaning. Why should there be trouble here? In the early stages of the litigation, when the validity of this trust was not a burning question, the trustees themselves thought that James G. Fair intended to vest them with the title to the property, and so construed the will, for by their verified pleading they declared the title to be absolutely vested in them. This court is not authorized to give the will a forced construction, but simply to give it a natural construction; and when that construcion is given it, let the law take its course, wherever it may lead.

It is substantially conceded that a deed to the trustees in trust to "transfer and convey" at once to the children of Fair or to any other class of beneficiaries would be void as creating a trust forbidden by our statute, namely, a trust to convey land. But it is held that a deed to the trustees in trust for the use of Fair's children during their life, and then to "transfer and convey" to other parties, is valid as not creating a trust to convey. Certainly, to an ordinary mind the soundness of this reasoning is not satisfactory. There is no reason why a trust to "transfer and convey" is, or should be, transformed into a vice eo instanti by the mere insertion in the instrument of a clause that the land for a limited period should be held by the trustees, and the rents and profits during that time applied in other directions. To my mind, as far as this question is concerned, such a clause operates simply as a fixing of the day when the trustees shall make the conveyance to the beneficiaries. This case stands exactly as though the trustees under the will were required to apply the proceeds of the lands to the support of Fair's children for the period of twelve months, and thereupon "transfer and convey" those lands to the beneficiaries named. It would seem under those circumstances that a trust to convey land was intended to be created, and tested by the law of this State ex necessitate was created.

Opinion of Attorneys.

The attorneys for the children of Senator Fair were in no mood to talk about the decision last night. Charles S. Wheeler said that he had made it a rule not to be interviewed and would not talk about the matter in any way. He had no opinion that he would express about what course the Fair children would now take; nor would he say anything about the effect that the decision would have in entrenching the trustees of the estate for life. Attorney Heggerty talked a little. He took the view that the trustees were now confirmed in tenure until the Fair children should all be dead, and also said that Mrs. Craven could hope only to get $50 under the will if she could convince the courts that she was Fair's widow.

Lafe Pence on the contrary said that the decision would not affect the rights of Mrs. Fair to one-third of the income of the estate and one-third of the real and personal property. She was not a party to the action and was not bound by the judgment. She was free to attack and defeat the trust clause of the will of September 21, 1894, and to secure one-third of the estate and of the income, even though the children were bound by the decision. That decision by the Supreme Court would not be followed when the trust clause was attacked by her. She could attack on two grounds. One was that there was an unlawful accumulation of income, amounting to $500,000 per annum, under paragraphs 15 and 22 of the will, which, should any of the children survive 50 years, would, as it compounded, result in a fortune in the hands of the trustees many times greater than the whole value of the present estate; and sections 723 and 724 of the Civil Code made such accumulations unlawful. Paragraph 15 of the will provided that in the event of the death of the two doughters without issue two-thirds of the income must accumulate in the hands of the trustees until after the death of Charles L. Fair. This might be fifty years hence, and the accumulations at the end of that time would be many millions of dollars greater than the present total value of the estate. In neither case was the accumulation limited to the minority of a beneficiary; nor was it possible for the trustees, or the court, to determine or name any person to whom the income could be paid. The collateral kin living to-day might all die before the children. These points might be presented by the attorneys for Mrs. Fair on a rehearing of the case just decided by the Supreme Court, but Mrs. Fair was not a party to that litigation and the attorneys had some hesitation about offering their services as amicus curiae.

Fair Attorneys Get a Document That Disconcerts Them.

SENATOR WAS AN INDULGENT HUBBY

Widow Scores Several Points Before Judge Troutt.

Fair Attorneys Surprised by Production of the Simpton Documents.

THE attorneys for Charles L. Fair, the Fair estate and all the other interests allied against Mrs. Nettie R. Craven-Fair in her efforts to get a family allowance from the estate of the late Senator Fair had an unhappy time in court yesterday. Some few things did not go their way, and they unwittingly forced before the court some evidence ticular and all the Fair forces in general, but she managed to restrain herself and her opinion of Pierson was not expressed. It would not take a mind reader, however, to divine what it is. Mrs. Craven-Fair has a way of looking a whole lot of things, and it is not necessary for her to open her mouth to make herself very thoroughly understood.

Nightshirt Waved Again.

The late Senator Fair's silken night robe was waved again, but only for a brief moment, not long enough in fact to bring a blush to any one in the courtroom.

Senator Fair's manner of treating his alleged wife was a subject in which the attorneys appeared greatly interested. According to Mrs. Craven-Fair the Senator was an ideal hubby. She never had to ask him for money, and he was so particular that she should be well supplied that he left piles of twenties wherever she was likely to find them. Even before the marriage contract was signed he was liberal with his cash, for he slipped a handful of gold into her pocket one day, with the remark that he thought she might have use for a little spending money.

To controvert this testimony the Fair attorneys claimed that during the time Mrs. Craven-Fair claims she was so abundantly supplied with funds by the Senator she was discounting her salary warrants as principal of the Mission Grammar School and otherwise sparring around for ready money. The witness admitted that this was the fact, but was prepared with a plausible explanation for her actions.

The petitioner went on the witness stand as soon as the case was called. Attorney Pierson asked for the pencil deeds, dated September 8, 1894, conveying to "Mrs. Nettie R. Craven" property on Mission street and the realty and improvements on the southwest corner of Pine and Sansome streets. She identified them and stated:

"Those are the deeds I referred to last Wednesday as the provision made for me by Senator Fair in lieu of bequeathing me anything in his will." A letter from Fair to the witness, dated December 16, 1894, was also produced, and all of the documents were marked for identification.

He Was an Ideal Hubby.

Speaking of the manner in which Fair had provided for her during his lifetime she said;

"He did everything for me that a husband possibly could. He left money for me everywhere about my house, generally $200 or $300 at a time. Once he sent me a package of greenbacks to the Mission Grammar School by the janitor. I had sent a message to the Senator, and when the janitor returned with the reply he brought the greenbacks."

"Did you send for the money?"

"Oh, no; I never asked the Senator for a cent. It was not necessary."

Then she testified that Fair had given her a diamond ring. The attorneys wanted to know all about it, even down to the number of times the witness had worn it. Attorney Charles Pence objected to the line of the cross-examination, asserting that it was a time-killing enterprise calculated to wear out the court. To this Mr. McEnerney retorted:

"It is the kind of examination that is calculated to wear out some classes of witnesses. We are going to proceed along this line because we think this witness is fabricating and all her testimony is false."

Fair never bought dresses for his alleged wife, but he always supplied her with funds to pay her dressmaker, Mrs. Purcell. He is reported to have told the lady of the thimble and thread not to count on expense when building a gown for Mrs. Craven-Fair, but to provide her with everything in the dress line she wanted. The only thing Mrs. Craven-Fair did not get from the Senator was a Christmas present or a token in commemoration of the anniversary of their marriage.

To show that her story was an unreasonable one in some details, Attorney Pierson asked if it was not a fact that during Fair's lifetime and subsequent to May 23, 1892, she had shaved her warrants on the school fund in order to raise some ready money. She admitted that Mr. Pierson was close to being right, but claimed there was no money in the school fund at the time and she was forced to get some money to complete some investments she had made previous to her marriage and of which the Senator had not been informed.

She was asked to name those to whom she was indebted at the time she married Fair. Pence objected to the question, which brought the following explanation of its purpose from Mr. McEnerney:

"We claim that she is not the widow of the late James G. Fair and that her testimony is an invention. She cannot account for any money given her by Fair and we claim he never gave her a cent, but that on the contrary she lived on the $250 a month salary she received as a teacher in the San Francisco School Department."

A long line of questions as to how Senator Fair knew she had returned from the East in 1892 brought another protest from Attorney Pence.

The Sausalito Ceremony.

"These questions are preliminary to the Sausalito ceremony," replied Attorney McEnerney. "We will not follow the fortunes of the silk nightshirt this time."

Mrs. Craven-Fair then went on to tell how the Sausalito affair occurred and the circumstances which suggested it. Her daughter Margaret had become very much displeased at the contract affair and it was in deference to her wishes that the civil ceremony took place. She said that she did not consider that it made her any more Fair's wife than she had been before.

"That is just exactly what we have been contending all along," was the tart remark from Attorney Pierson.

The witness went into all the details of the Sausalito trip, but the nearest she could come to the date of it was between July 10 and August 20, 1892. Strange as it may appear, neither she nor the Senator met any one they knew on the day they went across the bay. One man she remembered to whom Fair had spoken on that day was the proprietor of the saloon or inn where he went to inquire for Simpton. She could not remember his name, but has him located.

"The Senator told Simpton he did not want the marriage to be made public, but wanted him to keep a record of it, which he promised to do," continued the witness.

At this stage of the proceedings the Fair attorneys went off wrong, the Simpton letter and affidavit were produced and the scene followed which has already been described.

Wanted to Adopt Margaret.

Mrs. Craven-Fair said she had read the "widow clause" in Fair's reputed will, but knew he had not written it, because he had shown her from time to time copies of all the wills Pierson had been preparing for him and in none of them was there such a provision. She told about Reuben Lloyd offering her $250,000 for a quitclaim to the estate and later how Russell J. Wilson, on behalf of the children, offered to compromise for $500,000. She believed the children were sincere until Judge Slack knocked out the trust clause in the alleged will. After that they refused to negotiate with her. A provision of all the proposed compromises was that she was to be protected from all notoriety.

She testified that upon one occasion Fair wanted to adopt her daughter Margaret, but for some reason not explained he failed to do so. The petitioner's answers in the suit of Angus vs. Craven were introduced in evidence. These are signed "Nettie R. Craven."

The trial will proceed this morning at 10:30 o'clock.

Publishers in Finland lose from $6000 to $10,000 a year due to suppression of books by the Government.

STATEMENT MADE TO W. W. FOOTE BY MARIN COUNTY MAGISTRATE

SAUSALITO, Cal., Aug. 8, 1899.

HON. W. W. FOOTE, San Francisco, Cal.—Dear Sir: At the request of Mrs. Nettie R. Craven-Fair I beg to inform you:

I. That at all the times during the year 1892 I was a duly elected, qualified and acting Justice of the Peace within and for the county of Marin, State of California, having my office at Sausalito, in the township of Sausalito.

II. That during said year 1892 and for a long time prior and subsequent thereto I personally knew Senator James G. Fair, and also knew Mrs. Nettie R. Craven.

III. That several years ago—I cannot remember the exact year or month at the present time, but may be able to do so after some careful investigations—certainly prior to the year 1894, the said James G. Fair called upon me in company with the said Nettie Craven at my office in Sausalito. The Senator stated to me that they had called for the purpose of having me as Justice of the Peace perform a marriage ceremony between them. I required of the couple the presentation of the marriage license, but the Senator stated that they had not taken out any license, as they did not want their marriage known to the world at large, and that as a matter of fact they were already husband and wife by virtue of a marriage contract which they had entered into between themselves some time before, but that the lady felt that she would be better satisfied to have the marriage solemnized by a Justice of the Peace.

IV. That the said James G. Fair and the said Nettie R. Craven thereupon in my presence declared that they took each other as husband and wife, and I thereupon pronounced them to be husband and wife.

V. That both parties asked me to keep the matter secret and not to say anything about the ceremony to any one unless requested by either party to do so.

VI. That I made a record of the proceeding, but that in the year 1894 all my records were destroyed by fire during a great conflagration in Sausalito which destroyed a whole block. Yours respectfully,

G. W. SIMPTON, Recorder of the Town of Sausalito, Cal.

SIMPTON'S SWORN STORY OF THE SAUSALITO MARRIAGE CEREMONY

State of California, City and County of San Francisco, ss.

G. W. SIMPTON, being duly sworn, deposes and says: During the year 1892 I was a Justice of the Peace for the Township of Sausalito, County of Marin, State of California, with an office at Sausalito; that in the year 1892 and for a long time prior thereto I personally knew Senator James G. Fair and also knew Mrs. Nettie R. Craven; that about the year 1892 and prior to the year 1894 said Senator James G. Fair called upon me, in company with the said Nettie R. Craven, at my office in Sausalito;

That the Senator stated to me that he had called for the purpose of having me, as a Justice of the Peace, perform a marriage ceremony between himself and Mrs. Craven; that he also stated that there existed a contract of marriage, but she wanted a solemnization. I requested of them the presentation of the marriage license, which they did not produce, but the Senator stated that he did not want the solemnization of the marriage known to the world;

That immediately thereafter I performed the marriage ceremony between the said parties and thereupon made a record of said solemnization in my record book, which said record book was destroyed by the fire which occurred in Sausalito in 1893 or 1894; that during said solemnization the said James G. Fair and the said Nettie R. Craven, in my presence, declared that they took each other as husband and wife. I thereupon pronounced them such;

That after the performance of said ceremony both parties asked me to keep the matter secret and not to say anything about the ceremony to any one, unless requested by one of the parties so to do. G. W. SIMPTON.

Subscribed and sworn to before me this 12th day of August, 1899.

HARRY J. LASK,

Notary Public in and for the City and County of San Francisco, State of California.

PERSONS WHO ARE

Anaemic are pale, weak and emaciated. These three things constitute anaemia. Anaemia may result from organic weakness, nervous troubles, or female weakness. In women more often it is the latter cause.

HUDYAN cures anaemia. It matters not the cause, HUDYAN brings back a glow of health to all pale and wan complexions.

With anaemia are nearly always associated headaches, either dull or throbbing, Fig. 1; sunken eyes and dark rings under eyes, Fig. 2; pale face and coated tongue, Fig. 3; palpitation of heart, Fig. 4; impaired digestion, Fig. 5; weakness of limbs, Fig. 6.

HUDYAN promptly relieves these symptoms, for HUDYAN gives tone and strength to all the body tissues, assists digestion and assimilation, brings all the organs into harmonious action.

In cases of female disorder there is no better remedy than HUDYAN. HUDYAN cures all those weaknesses and troubles that are natural to women.

HUDYAN makes rich blood, from which come bodily strength and flesh. If you would possess health and strength, a clear skin and rosy cheeks, "take HUDYAN."

HUDYAN is for sale by druggists—50c a package, or six packages for $2.50.

If your druggist does not keep HUDYAN, send direct to the HUDYAN REMEDY CO., Cor. Stockton, Ellis and Market Sts., San Francisco, Cal.

CONSULT FREE. Consult Free the Hudyan Doctors. Call or write to them.

A stylish suit or overcoat made to your measure for

$13.50

This is the suit or overcoat for the business man. He generally pays $17.50 to $20.00 for his clothes, because he wants quality consistent with these prices.

It is quality he is looking for—the price is of second importance.

That is why these suits and overcoats are what he wants. The price is lower than he usually pays—but the quality he gets is the same.

A $17.50 value for $13.50! Big cloth purchases by us before the raise and a special price make it so.

Eight styles of suits and overcoats—any one of which made to order for $13.50. Samples free.

If out of town write for samples and self-measurement blank. Mention you want Catalogue No. 2.

S.N.Wood&Co.

718 Market and Cor. Powell and Eddy.