

JENNER v. TURNER.

A curious question was raised in this case upon a condition in restraint of marriage in the will of Miss Mary Elizabeth Turner, of Hopton, in Yorkshire. The testatrix devised certain real estates upon trust for her father for life, and then to her brother, John William Turner, for life, with remainder to his first and other sons in tail and remainders over. She then bequeathed the proceeds of her residuary personal estate in trust for her brother, John William Turner, absolutely, and then followed this clause—"But if my said brother shall marry during my life without my consent in writing, or if he shall already have married, or shall hereafter marry a domestic servant, or a person who is or who has been, or who shall at any previous time have been a domestic servant," then she declared that the real estate should go in favour of persons who were now represented by the plaintiffs; and the personal estate was to go to the owner of part of the real estate. The will was proved in February, 1865. The father of the testatrix died in September, 1871, and on the 17th of December, 1872, the testatrix's brother, John William Turner, who was a solicitor, having come into possession of the real estate as tenant for life, married Mary Anne Sowerby. John W. Turner died in July, 1879, leaving two children. The plaintiffs claimed to be entitled to the real estate on the ground that J. W. Turner had forfeited his title to the property by marrying a person who was alleged to have been a domestic servant. The action was brought against the two children of J. W. Turner, and against his widow. There was a conflict of evidence as to whether the wife of J. W. Turner had been a domestic servant or not, and the defendants' counsel rested their case upon the legal ground that the condition contained in the will, being a restraint upon marriage, was illegal and void.

Sir Henry Jackson, Q.C., and Mr. Wolstenholme appeared for the plaintiffs; and Mr. Henning, Q.C., and Mr. B. Rogers for the defendants.

The VICE-CHANCELLOR, having reserved his judgment, now said that, upon the question of fact, the specific and circumstantial evidence was conclusive that Mary Ann Sowerby was, both during the lifetime of the testatrix's father and afterwards, a domestic servant, whether called a housekeeper or not was of no consequence, and that she was a domestic servant at the time Mr. Turner married her. The only question was whether the condition in the will was illegal, as being an undue restraint upon marriage. It was conceded that rules governing the disposition of personal property did not apply to real estate, and the only point was whether the condition could be supported as to real estate. His Lordship had no reasonable doubt for saying that a testator might declare his gift to be forfeitable on the marriage of the devisee with any particular individual by name, or with a person of any particular nation, or with the member of any particular class. This question had been decided expressly in the case of "*Perrin v. Lyon*" (IX. *East's Reports*), where real property was devised to the testator's daughter in fee, with a limitation over in case she married a Scotchman; and, the daughter having married a Scotchman, the devise over was declared to be valid. He was therefore of opinion that the plaintiffs had established their case, and had made out their title to the property claimed by them.