

of J. H. Blazzard. The proceedings seem to be regular, and the court had jurisdiction of the matter and the power to make that order.

In pursuance of the order and of the law, the Mayor deeded the land to Mary Ison Blazzard, administratrix of the estate of J. H. Blazzard, deceased, in trust for the heirs of said estate, and concluded by saying: "By these presents I do hereby grant and convey unto the said Mary Ison Blazzard, administratrix of the estate of the late J. H. Blazzard, deceased, in trust for the heirs of said estate," the land described.

The question is made here that the heirs of the estate meant the persons entitled to the estate under the will; that it did not mean his lawful heirs; that if it had, the term would have been used "heirs of John H. Blazzard, deceased." The term heirs is a technical one, and embraces persons who are so related to the deceased, as in this case, by consanguinity or affinity, as under the law makes them heirs. The children, of course, would be heirs, by consanguinity, and the wife, where she may inherit, would be an heir by the relationship of affinity under the law. That is the usual meaning given to it. It refers to the persons to whom the law passes the estate in case of the death of the person owning property. The proper term would have been here, the devisees. It is possible and probable that the parties to this deed did not take into consideration that there were lawful heirs alive, or they might have understood that the defendants were, if they did not know the facts, or they may have understood that it referred to the devisees. But under the law and the language used, I am of the opinion that this should be held to refer to the lawful heirs of John H. Blazzard.

The property is given in trust without any further expression. It says, "In trust for the heirs of said estate," which I am disposed to hold means the lawful heirs of John H. Blazzard. It is what is sometimes termed in equity a dry trust. It is not an active trust; there is nothing for the trustees to do. It is what is sometimes called a passive trust. The trustee is a passive agency or instrumentality used through which the title passes to the beneficiaries. The trustee is used as a conduit, so to speak, to pass the title, without requiring him to do anything.

One question is whether the law executes the trust at once, and vests the legal title in the *cestui que trusts* or beneficiaries. The statute of uses in England would execute it. It might not have done so at some periods, because it might have been regarded as a use upon a use, but not so in this country. Here the deed passes the fee, and the right to the *reversion* at once, and the only trust here is one in favor of the *cestui que trusts*.

The question further is, inasmuch as Mary Ison Blazzard continued in the possession of this property, and never expressly at least renounced the trust, but continued to hold the possession and to exercise acts of ownership over the property, and that the defendants continued to do

so after her death (which was but a short time before the suit was commenced), whether she should be regarded as holding for these plaintiffs, the lawful heirs, or whether she should be regarded as holding adversely to them. If her rights and her possession are regarded as adverse to them, then the statute of limitations would apply.

The general rule of law is that the statute of limitations does not run against an express trust, as this is; and in that case the law is that the statute will not commence to run until the trustee, by some equivocal conduct, brought to the attention of the *cestui que trusts*, renounces the trust. It is said in this case that Sarah Blazzard, the lawful wife, several years previous to the death of John H. Blazzard, on account of his cruel treatment towards her, and, there is evidence to show, partly on account of his marrying another woman, left him and went some three hundred miles into the county of Washington, near St. George, and lived there; that they were ignorant, and neither she nor her children were informed as to their rights, and that they never had any notice that Mary Ison Blazzard was holding this property adversely to them, or holding it subject to the provisions of the will and not in accordance with the trust provided. I am of the opinion that where a trustee remains in possession and control of the property, the statute of limitations will not apply, unless on account of laches. In these cases of equity the law by analogy applies the statute of limitations very often where, as before stated, by unequivocal adverse possession, where the trustee has brought the fact to the attention of his beneficiaries that he is holding adversely to them, and renounces the trust, the statute of limitations will be applied. I am of the opinion that the statute of limitations should not apply to the Fourteenth Ward tract.

The other tract stands upon different principles. Lydia Blazzard was living upon that property. She was holding and claiming to hold by virtue of the will. That will professed to give her the right to the possession and use of it, and immediately on her death, according to the will, it passed to these heirs. She and her children were in possession some eighteen or nineteen years a possession that was hostile to the trustee under this deed. It is true that Lydia Blazzard and her children recognized Mary Ison Blazzard as the executrix of the estate, and recognized her as having some rights with respect to the property under the will, and as executrix; but the evidence I think shows that Lydia for her children never recognized the right of Mary Ison Blazzard as trustee for these plaintiffs. Lydia claims by virtue of the will, and her children claim by virtue of the will. It is true that the will did not pass the title to them, but they claimed it, and held possession according to it; and if anyone had gone there and asked Lydia Blazzard what her claim was to that property, she would have said that she claimed it

because the will gave her the right to it, and gave her children the right to it. I do not think the evidence would leave any room for doubt on that point. She claims under the provisions of the will and the plaintiffs claim under the provision of the deed. The deed they say gave the property to them. Lydia Blazzard and her children say that the will gives it to them. Their possession and claim was antagonistic, and was hostile to the claim of Mary Ison Blazzard and these *cestui que trusts* under the deed.

The question therefore arises, will the statute of limitation by analogy apply to this case? Here is a hostile possession and claim in direct conflict with the claim of these plaintiffs and with the claim of Mary Ison Blazzard, as she must have made it if she were holding for the plaintiffs. Lydia Blazzard does not claim under the trust created by the deed. She claims under the provisions of the will, and that the will controlled the right and should transfer it from Mary Ison Blazzard under the deed to her, whereas, the plaintiffs claim that the deed passed it to them; and as I think that that provision of the statute of uses would apply which would pass the title to them if they demanded it, because I am of the opinion that that statute of uses is regarded as passing with the common law into this country, and this territory, being settled up by the people of the United States who had adopted the common law, the common law was to be brought with them, as well as this statute of uses. But I am of the opinion that inasmuch as the position of Mary Ison Blazzard to this Fourteenth Ward property was at least equivocal, she could be holding under the deed or under the will; she might be claiming under either, according to the provisions of the will or according to the provisions of the deed. Rightfully she should have held under the provisions of the deed, which gave it to the lawful heirs, but I am inclined to the opinion that she understood herself to be holding according to the provisions of the will, and not under the deed.

I am of the opinion, therefore, and so find, that the statute of limitations applies as to the tract in the Seventh Ward, held and possessed by Lydia Blazzard and her children, and that it does not apply to the property in the Fourteenth Ward. I am further of the opinion that John Blazzard, the imbecile is not barred by the statute of limitations; that he has a right to a one-fourth interest in all this property, and so far as the defendants have received the rents and profits of this Seventh Ward property, he is entitled to one-fourth of them, and to recover that against them. As to the Fourteenth Ward property, so far as these defendants have received the rents and profits, the plaintiffs in this case are entitled to recover. I am further of the opinion that as to the Fourteenth Ward property, so far as any alienations have been made, the purchasers took it without notice of the rights of these plaintiffs.