

MEREDITH, C.J.O.:— . . . . Jacob Singer died on the 13th November, 1911, and left surviving him his widow, Annie Singer, and eleven children, the eldest of whom, Mrs. Miller, is forty-two years of age, and the youngest, Fannie, seventeen. Of the children, eight were sons; and three of them—Moses, Max, and Israel—have attained the age of thirty. The will is dated the 16th May, 1904, and the codicil bears date the 31st October, 1911.

The first question for decision is as to the effect of the following clause of the will: "I direct my said trustees to pay to my wife Annie Singer during the term of her natural life and as long as she will remain my widow the net annual income arising from my estate for the maintenance of herself and our children. Should, however, my said wife re-marry, then such annuity shall cease." . . . .

Apart from authority, I should have no doubt as to what the testator meant or as to what the language he has used to express his wish imports, and that is, that his wife should be entitled during her widowhood to receive the income, subject to an obligation on her part to maintain the children out of it, but leaving to her discretion the manner in and the extent to which provision should be made for any child—a discretion not subject to control or interference by the Court so long as it should be exercised in good faith; and that, as I understand the decision of the Court of Appeal in *Allen v. Furness* (1892), 20 A.R. 34, was that Court's view of the effect of such a provision as the will in question contains. . . .

[Reference to *In re Robertson's Trust* (1858), 6 W.R. 405; *Lamb v. Eames* (1871), L.R. 6 Ch. 597; *In re G. Infants*, [1899] 1 Ch. 719; *In re Booth*, [1894] 2 Ch. 282; *In re Pollock*, [1906] 1 Ch. 146.]

The observations of North, J., in *In re Booth*, seem to indicate that, in his view, the wife took the income subject to a trust for the maintenance and education of the children; and, if that is the effect of his decision, it is opposed to *Allen v. Furness*, and we must follow that case in preference to *In re Booth*.

The next question is as to whether the widow, in carrying out the object with which the income was given to her, is bound to take into consideration the need of support of children, regardless of whether or not they have become forisfamiliaried or have married.