have now paid to them the balance of the interest or income which they would have received if the $100,000 fund had been made up or created at once upon the death of the testator. It seemed plain that, as the estate stood at his death, and having regard to the changed value of the stock in the cement company, the executors never could have at once created this fund; they could not have done so, at least, without serious loss to the estate. This was now admitted on all hands. The result of the agreement between the parties, as construed and pronounced upon by Rose, J., was to preclude the claim suggested and asserted in the three questions. The parties to the agreement, including Jane A. Elliott and Eliza M. Tomlinson, acquiesced in the way in which the executors dealt with the estate down to the date thereof, and they had accepted the income paid to them in lieu of what would have been paid had it been possible to have at once created the fund of $100,000 and invested the cash portion thereof. The last clause in the agreement, by which it was agreed that the executors should stand seised of the fund created for the purpose of providing the quarterly payments for Jane and Eliza, might be thought to be an authority to the executors to continue in the same course, or at all events to do so until some objection should be taken. The learned Judge was of opinion that no effect could be given to the claim of Jane and Eliza as to the period before the date of the agreement; but, with some hesitation, he had come to the conclusion that from the date of that agreement they were entitled to have made up to them the interest or income which they would have received if the $100,000 fund had been created at that date. The allowance of the claim with respect to the costs of administering the fund should have effect also from the date of the agreement.

The fourth question was, whether Jane and Eliza were entitled to receive from the executors the gross income without deducting therefrom the costs and charges which should be incurred in the future in connection with the administration of the fund. This question should be answered in the affirmative.

In answer to the fifth question, the learned Judge said that, in his opinion, it was not incumbent upon the executors forthwith to sell and realise upon the bank-shares held by the testator at the time of his decease and now forming part of the fund.

Order declaring accordingly; costs of all parties out of the estate.