the issue were to take, but if the child dying left no issue the surviving children were to take.

This will had already been construed. The income from the residue was greater than the widow's annuity, and the holding was that the shares of the children were vested, subject to being divested in event of death before the period of distribution, and that the income above that required to meet the annuity was payable to the children.

A further question now arose, whether certain money was to be regarded as income now distributable, or as corpus to be retained and invested till the period of distribution.

During his lifetime the testator had invested $3,661.36 in the purchase of an interest in "gas-leases." This venture turned out well. He received $4,500 dividends. His executors received $4,932.59, and then sold out for $9,500. The question was as to the $4,932.59.

If the rule in Howe v. Earl of Dartmouth (1802), 7 Ves. 137, applied, the $4,932.59 would have to be apportioned between income and capital. But the rule did not apply to the case in hand. Reference to Re Hammersley (1899), 81 L.T.R. 150; In re Bland, [1899] 2 Ch. 336.

Here the gift was for the benefit of a class, but the beneficial enjoyment was postponed for the purposes of the estate—to allow the income to be used for the raising of the widow's annuity, and, as had already been held, the surplus income was not to accumulate, but was at once divisible.

There was no reason to suppose that the testator intended that the income which was derived from this property should not be at once divided as income among his children, but should be retained for the benefit of the same children upon the death of the widow. The executory gift was substitutional, and there could be no valid reason to impute to the testator any intention of benefiting those who would take in the event of the children or any of them dying before the period of distribution, at the expense of the children themselves.

For these reasons, the $4,932.59 was to be regarded as income; it formed no part of the capital fund to be retained intact during the life of the widow; but was presently divisible.

Costs out of the $4,932.59, the fund in question.