

subject to the dower provision made for the widow of a deceased son. When the residuary estate, so called—that is, the \$35,000—is free from its primary burden of providing an income for the maintenance of the wife and family at home, or the minor children in the case of her death, then this residue is to be divided among the testator's surviving grandchildren.

The opposing theory, advocated by Mr. J. R. Meredith, in the interests of the grandchildren, is that the \$35,000 is set aside for a temporary purpose merely. Upon the death of the widow it is to form part of the residue, and there is but one residual fund to be dealt with. Upon the death of the children, this residual fund is to be divided, share and share alike, among the then surviving grandchildren; the children having in the meantime shared in the income derived.

No third theory for the construction of the will has been suggested.

Each theory has its defects. The theory advocated by the children involves the rejection of the words "to be part of," in the clause dealing with the \$35,000, where the testator directs it upon the death of the wife "to become part of and to form the residue of my estate." Yet the opposite theory presents a similar difficulty, as it involves the rejection of the words "to form," found in the same expression. It is also unlikely that the testator would mean to postpone the division of the estate until the death of the last surviving child, and that this should be the time when the surviving grandchildren would take.

I am inclined to accept the first theory, with some modifications. It appears to me that the period for which the residue is to be held under clause 4, is the death or marriage of the wife, and the attaining of age of the youngest surviving child, whichever is latest. Up to that time this fund is to be resorted to for the purpose of maintaining the family; and in the meantime, I think the trustees had the right to also resort to it for the purpose of medical and kindred expenses, and for the payment of the marriage portions of both sons and daughters; and I would fix this as the period of survivorship, when the division amongst the grandchildren is to take place. Until then, any interest arising from this \$35,000, not used in the payment of the widow's annuity or the substituted annuity for the maintenance of minor children, should be divided among the children equally.