

It is contended by the appellants that the widow took only an estate during widowhood, but it will be observed that upon that view as to the effect of the will no disposition is made of the remainder expectant on the determination of the widow's estate in the event of her not marrying again, the only disposition of it being that which was to take effect in case she should marry again.

That the testator intended that there should be an intestacy in any event is a priori most unlikely, and the absence of any provision as to the disposition of the property upon the death of his wife in case she should not have married again strongly favours the view that the testator did not intend that the absolute estate which the language of the earlier part of the will indicates that he intended to give to his wife, should be taken from her unless she should marry again.

The apparent difficulty arises from the use by the testator of the word "while" in the sentence following the description of the property: "while the said Margaret Ann Mumby remains my widow." Treating these words as meaning that the estate and interest of the wife are to be absolute if she remains a widow, the language of the will accords with what was the apparent scheme of it, and there is no intestacy in any event.

I am of opinion that the will may be so read, or that, if it may not, the sentence I have quoted should be rejected as repugnant to the estate which is given by the preceding words of the will. A different construction, besides leaving one event unprovided for, requires, as my brother Street points out, the entire rejection of the strong words in which the absolute interest is originally given.

Counsel for the appellants relied on *Sheratt v. Bentley*, 2 Myl. & K. 149, but that case is useful only as illustrative of the principle of construction upon which it was decided, which was, that where the general intention of the testator can be collected upon the whole will, particular terms which are inconsistent with that intention may be rejected as introduced by mistake or ignorance as to the meaning of them on the part of the testator.

Counsel for the appellants sought to apply this principle as it was applied in *Sherratt v. Bentley*, by striking out the words "her heirs, executors, administrators, and assigns, to and for her and their sole and absolute benefit according to the nature and quality thereof respectively;" but I would, instead of doing that, in order to carry out what appears to me to have been the general intention of the testator,