

After stating the provisions of the marriage settlement and the will of the settlor, and referring to settlements and agreements made with and releases taken from the other beneficiaries by Barlow Cumberland, and investments made by him, the learned Judge stated his conclusions as follows:—

(1) None of the agreements relied upon precluded the daughters of the settlor (sisters of Barlow Cumberland) from asserting their rights. There was no fraud in obtaining their signatures; but the surrounding circumstances were such as to call for independent and fuller explanation than was afforded to them; there was no adequate disclosure to them of the real nature of the transactions of the trustees; and they did not know their rights in the premises. Therefore the accounts should be taken on the basis of the rights of the parties under the original settlement and the will of the settlor. Duncan Campbell was not at all under the influence of Barlow Cumberland, and the release executed by him must stand. Any difference that this might make should be borne by or enure to the benefit of the other beneficiaries.

(2) The accounts were kept with entire accuracy, and the books of the estate and the accounts embodied in the annual reports should be taken as the basis of accounting without the production of any further vouchers, but with liberty to surcharge and falsify.

(3) The investments in real estate which involved either the purchase of an equity of redemption or the giving of a mortgage, or which were unproductive, were unauthorised.

(4) An account should be taken of the amount of money from time to time invested in any such transactions, and the trustees should be charged with income upon the amount so invested, at the rate of 6 per cent. per annum, and as and when realisations took place the trustees should receive credit for the amounts realised.

(5) If the net result is a loss to the estate, that loss should be borne by the estate of Barlow Cumberland. The result of the unauthorised investments was the cutting down of the income below what was necessary to pay the daughters in full; and his estate must bear that loss. Anything that this charging of income upon the capital so invested produced, over and above what was necessary to pay the daughters in full, would belong to Barlow Cumberland, not only as representing his two shares, but as representing his interest in the surplus. If the taking of this account shewed a gain above the 6 per cent. income, that gain would form part of the capital of the estate.