

**Will—Construction—Residuary gift—Charitable purposes
—Discretion of executor as to objects and purposes.**

Hales v. Attorney-General (1922), 1 Ch. 287, Eve, J.:—In her will a testatrix left in blank the name of her residuary legatee. By a codicil she desired that the residue of her estate be "applied for charitable purposes, as I may in writing direct, or to be retained by my executor for such objects and such purposes as he may in his discretion select, and to be at his own disposal." No written directions were given as to the charities to be benefited. Two questions arose, viz., was there a good charitable trust declared, and if not, did the executor take the residue beneficially, or as a trustee for the next of kin? It was held that there was no good charitable trust, because the executor had a discretion under which he might devote the residue to purposes not of a charitable nature. It was further held that the executor held as trustee for the next of kin, because there was no direct gift to him. He took in a representative capacity by virtue of his office.

**Will—Testamentary power of appointment—Covenant to
appoint in a particular way—Covenant not to revoke
appointment — Will exercising power in accordance
with covenant—Subsequent will revoking appointment.**

Winckley v. Winterton (1922), 1 Ch. 292. Russell, J.:—The donee of a special testamentary power of appointment covenanted by deed to appoint to her son out of a trust fund not less than £4,000, and not to revoke that appointment. She executed a will making such appointment, but afterwards executed another will, revoking the first, by which she appointed a sum of less than £4,000.

It was held that the deed of covenant had no legal operation at all. The donee of a special testamentary power of appointment cannot validly covenant to appoint by will in a particular way. Such a power is in the nature of a fiduciary power to be exercised by the appointor's will only; so that up to the last moment of his life he may deal with the funds having regard to the circumstances then affecting the various objects of the power. It is not a proper discharge of the donee's duty to fetter his fiduciary discretion by a covenant executed beforehand. Such a power may, no doubt, be validly released; or