

property to the wife absolutely, with the fullest power to sell and dispose of it. Though the object was declared to be for her support and maintenance, Byrne, J., read the will as one giving her unlimited control, and held that she had the absolute interest. This is clearly distinguishable from the present case, where the testator does not give to her absolutely, but in trust, and gives it only for her support and maintenance while she remains unmarried.

In *re Jones* was also distinguished, and the Irish case cited by Mr. Denton, in *Osterhout v. Osterhout*, 7 O.L.R. 409, in the same way as I now distinguish from the present will. All the cases relied on proceed upon the consideration that an absolute gift is bestowed, which is not to be reduced by ambiguous words, or that the scope of user is unlimited.

The wife of the testator predeceased him, and, leaving her out, the scheme of the will is to benefit his two children, Mary and George. She gets the Phoebe street land as a home, and, by an absolute devise, all the residue of his property she gets in trust for herself and her brother on these conditions:—

She is to have the sole use and benefit of it, both as to capital and interest, for her support and maintenance as long as she remains unmarried, without consulting with the executors.

If she marries during the life of George, one half of the residue is to go to her absolutely and the other half to George absolutely.

If George dies before the daughter marries, then the whole is to go to Mary absolutely.

The legal effect is, that the residue vests in the daughter as trustee, to expend thereout, as shall seem fit to her, what is required for her support and maintenance while she remains unmarried: upon trust, if she marries during the life of George, to hold it in moieties for herself and George as tenants in common absolutely; and upon further trust, if George dies before she marries, for herself absolutely.

The trust vested in her is required only for the purpose of her support and maintenance while unmarried, and, subject to that, the whole is to be divided between brother and sister as directed in the case of her marrying in George's life, or to go to her alone in the case of George dying before she marries.

It is not needful to pursue other possibilities in order to construe this will.

The judgment in appeal is right, as far as it goes, with the exception of the clause that the executors may not pay nor hand