

children attaining 21, the estate was to be divided between the testator's children then living, share and share alike; and, when this was read with the devise and bequest, in the earlier part of the same sentence, of all the testator's real and personal estate to Sarah Maria Bulman, it seemed quite clear that the devise to her was not, and was not intended to be, to her absolutely.

The cases cited in support of the applicant's contention all deal with devises by which there was attempted to be given to other devisees, on the death of the first taker, not the whole subject of the original devise, but "the balance if any," or "what is left," or "what has not been spent," etc.

There was a clear distinction between these cases and the present one, where there was no express direction from which the conclusion could be drawn that the testator intended the widow to use or dispose of any part of the corpus of the estate, even if he intended her to enjoy the revenue therefrom during her lifetime, which, however, might be open to argument. The express powers given to her as an executrix were merely to sell and invest the proceeds of sale with a direction as to the character of investment. If the intention was that she should take the estate absolutely, it is improbable that the testator would have thought it necessary to give her these express powers, and particularly the power to invest.

The devises made in such cases as *Constable v. Bull* (1849), 3 DeG. & S. 411, *Re Sheldon and Kemble* (1885), 53 L.T.R. 527, were in language much more favourable to the first taker than was the form of the devise to the wife of this testator, and in each the decision was against an absolute gift to such first taker.

Reference also to *Re Cutter* (1916), 37 O.L.R. 42, where many of the earlier cases are collected.

It was evident that the testator intended to benefit his children living at the time of his wife's death; and, having due regard to the language of the whole will, effect could be given to that intention without doing violence to any other part of the will and without infringing upon any binding authority to the contrary.

The order should declare that, under Robert Bulman's will, his widow, Sarah Maria Bulman, did not take an absolute estate in fee simple.

Costs out of the estate.

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COUNTY OF MIDDLESEX V. CITY OF LONDON—FALCONBRIDGE,  
C.J.K.B.—DEC. 22.

*Municipal Corporations—Construction and Maintenance of Highways—Liability of City Corporation to County Corporation for Share of Expense.*—Action to recover \$7,500 and interest said to be due to the plaintiffs by the defendants as the defendants' share of