

of an absolute gift of the corpus. But he argued, and I think rightly, that it is more than a gift of a life interest in the income. The direction to the executors, that, in case of sickness of the sons or either of them, they are to advance out of the principal such portion as they may think necessary for the support of the one who is sick, gives an interest in the corpus. It creates a trust to be exercised by the executors in case of sickness, and they have no discretion to decline to exercise it, if called upon to do so.

They are at liberty to use their discretion in determining the amount necessary to be applied for the support of the sick one, and in that respect they would not in ordinary circumstances be controlled by the Court.

I think the effect of these directions of the will is that, upon a son falling sick, a right to some portion of the principal of his legacy vests in him, the amount being that which the executors may in their discretion think necessary for his support during his sickness, and that in the event of his death before receiving that amount, his estate is entitled to receive it from the executors.

It appears to be the case that the executors had no knowledge of Grier Evans's sickness, and were not called upon to exercise their discretion as to the amount to be advanced, but if I am correct in my reading of the will, and the fact of sickness is all that is needed to vest the right to some amount, and to give rise to the duty of advancing it, the circumstance that the beneficiary died before it was actually advanced or set apart should not operate to deprive his personal representative of the right to receive it. The language of Vice-Chancellor Sir W. Page Wood in *In re Sanderson's Trust*, 3 K. & P. at p. 507, seems applicable, although the circumstances were not the same. He said: "The trustees have not the discretion of saying 'we will withhold any part of this income merely upon our representation of what we think discreet.' If a bill had been filed in behalf of this gentleman, during his lifetime, to have a sufficient part of the income drawn out for the purposes of his maintenance, attendance, and comfort, it would not have been competent for the trustees to say, 'we in our judgment, and in the exercise of our discretion, do not think that this is requisite, and the matter is one for our discretion and not for the judgment of the Court.' The testator might have given them such a discretion, regard being had to the circumstance that his brother had other property; but that is not the trust he has created. The trust he has created is an absolute trust for his brother to have everything necessary for his maintenance, attend-