

be divided in named proportions between certain charitable institutions.

It was contended on behalf of Captain Morgan and Mr. Percy Morgan that they were each entitled to a capital sum which, if invested, would produce £250 per year. In stating his conclusion adverse to this contention, Lindley, L.J., after pointing out, pp. 225-6, that the testator gave the whole of his property, real and personal, and that the passage in the will containing that gift was the only place where he mentioned the corpus of the property apart from the income of it except as regards some sums of £10 each and some furniture, went on to say:

“Having given all his property real and personal to the trustees he says that the gift is ‘upon trust to pay out of the interest and rents arising from the same the following sums of money.’ Now why does he put in the words ‘out of the interest and rents?’ He puts them in, as it appears to me, to exclude the idea that he is dealing with the corpus of his property.”

The conclusion of the Lord Justice was that applying his mind to the will, which was the first thing to look at without being troubled with cases, he could not find apparent in the will any intention “to give these persons anything more than an annuity.” He could not see any sign of an intention to give them a portion of the corpus of the testator’s property; on the contrary he thought the indications were that he did not intend anybody to have the corpus, not even the charitable institutions; that his own notion was that they should have the income; that he never thought anything about the corpus at all but was giving what he said was an annuity.

The conclusion of Lopes, L.J., was that the payments were charges upon a particular fund and not gifts of a portion of that particular fund.

Although in the case at bar the gift is a direct gift of £654 “out of the rents and profits payable” from the property and not as in *In re Morgan* a gift of the property to trustees to pay the annuities out of the interest and profits of the property, but that circumstance is not for the purpose of the present inquiry of any importance.

It was contended by counsel for the appellant and for the 3 unmarried daughters, that the language of the testatrix indicates that she intended that the gift should extend to the whole of the rents and profits of the property, and it was