

POWER OF APPOINTMENT—PARTIAL EXERCISE OF POWER—EXTENSION OF RANGE OF INVESTMENT BY DONEE OF POWER—INVALIDITY.

*In re Falconer, Property and Estates Co. v. Frost* (1908) 1 Ch. 410. In this case a wife had, under her husband's will, power of appointment over trust property in favour of her children. She made partial appointments in favour of some of the children; and without making any appointment in favour of the others, she purported to authorize the trustees to invest the trust fund in other investments than were authorized by the will, including mortgages of leaseholds. The trustees made such investments, but Warrington, J., held that they had no power to invest upon leasehold security any funds representing shares subject to the trusts of the will and passing in default of appointment.

MARRIED WOMAN—RESTRAINT ON ANTICIPATION—COVENANT NOT TO SUE.

*Sprange v. Lee* (1908) 1 Ch. 424 is one of those cases which illustrate the peculiar result of a restraint against anticipation by a married woman. In this case a separation deed was made between husband and wife whereby the husband covenanted to pay £1,000 to a trustee upon trust to pay the income to the wife and to pay him a further annual sum for her separate use without power of anticipation. Subsequently the husband commenced divorce proceedings, which were compromised, the wife purporting to release the husband from his covenant to pay the further annual sum. This release, however, by reason of the restraint against anticipation was void; the wife, however, covenanted not to sue for any additional income or support beyond the income of the £1,000. This was paid to and accepted by her during her life. She died bequeathing her property to an adopted daughter, and her legal personal representative brought the present action to recover the arrears of the annuity on the ground of the nullity of the release given by the wife. The husband counterclaimed for damages for breach of covenant of the wife not to sue and Neville, J., held that both plaintiff and defendant were entitled to succeed on their claim and counterclaim respectively, and he therefore made no order except that the plaintiff should pay the costs of the action and counterclaim.