

Their lordships' judgment was delivered by

HON. SIR WM. MEREDITH, C.J.O.:—I agree with my brother Middleton that there is no gift to the daughters of the rents and profits of the Bostwick property, and that the effect of the will is to give annuities payable out of these rents and profits.

It is unquestionable that unless a contrary intention appears by the will a devise of the rents and profits of land carries the land itself and by force of the Wills Act the fee simple or other estate of the testator in the land, and in *Goring v. Hanlon* (1869), 4 Ir. C. L. 144, it was sought to extend this rule of construction to bequests of specific annual sums out of land, but it was held that it was not applicable even though the specific sums happened to be the whole of the rent which at the time the land produced.

Some support for the proposition that a devise of an aliquot part of the rents and profits of land passes a like part of the land itself, is to be found in *Bent v. Cullen* (1871), 6 Ch. 233, but that case cannot in the light of subsequent cases be treated as authority for the proposition, and it is stated in Theobald on Wills, 7th ed., 503, that it "must be considered overruled." The case is discussed in *Re Morgan*, [1893] 3 Ch. 222, and it was there said by Lindley, L.J., p. 228, that he could "not help thinking that in *Bent v. Cullen* the Lord Chancellor, Lord Hatherley, did for a moment fail to observe the difference between giving a person a portion of the income of a fund and something payable out of it."

In *Re Morgan* the testator gave and bequeathed the whole of his property, real and personal, to his executors and trustees "upon trust to pay out of the interest and rents arising from the same the following sums of money; I give to my wife Elizabeth Morgan £250 per annum . . . I give to Captain H. H. Morgan or to his descendants £250 per year, also to Mr. Percy Morgan or his descendants £250 per year. To Mrs. Annie Augusta Hardie or her descendants £250 per year. To Mrs. Susan Pratton £50 per year. To Mrs. Susan S. Seller ten shillings per week. To each of the children of the late Mr. Wm. Addis a legacy of £10;" and after a bequest of the contents of his dwelling house, the will provided that "with regard to the residue of the interest and rents after the above payments have been made" it should