

Wills Act, 1837, secs. 23, 24 (sec. R.S.O. ch. 120, secs. 26, 27), a devise of a rent charge had been adeemed, in the following circumstances. The testator by his will made in 1894 devised a rent charge of £15 per annum issuing out of a freehold house to his daughter. He subsequently purchased the fee simple of the house and the conveyance expressly stated that the rent charge should merge in the fee simple. Lawrence, J., held that the devise of the rent charge was adeemed and that the daughter took no estate or interest in the house.

WILL—CONSTRUCTION—LIFE ESTATE TO HUSBAND “KNOWING THAT HE WILL CARRY OUT MY WISHES”—SUBSEQUENT UNATTESTED MEMORANDUM—NO ENFORCEABLE TRUST—INTESTACY.

*In re Gardner Huey v. Cunningham* (1920), 1 Ch. 501. The question in controversy in this case arose out of a will whereby the testatrix devised and bequeathed all her real and personal estate to her husband for his use and benefit during his life “knowing that he will carry out my wishes.” Four days after the date of the will she signed an unattested memorandum expressing her wishes that the money she left to her husband should be divided equally among certain named beneficiaries. There was no evidence that this memorandum or its contents were communicated to the husband at or before the execution of the will; but there was evidence that after the testatrix’s death the memorandum was found in her husband’s safe, and that in her lifetime the testatrix had said in the presence of her husband that her property after her husband’s death was to be divided between her two nieces and nephew, to which the husband signified his assent; and this disposition was in accordance with the memorandum which however, made a further provision in the event of one of the nieces dying. Eve, J., on an originating summons to determine the rights of the parties named in the memorandum—held that the memorandum was inoperative inasmuch as it purported to deal with property left to her husband and nothing had been left to him except his life estate; but even assuming that there was an implied gift of the residue to the husband, inasmuch as the trust appeared on the face of the will it was necessary to shew that at or before the execution of the will its terms had been made known to the legatee, and as this had not been done; following *Johnston v. Ball* (1857), 5 D.C. & Son 85, the trust failed; and the residue passed to the husband as next of kin, and on his death intestate, to his next of kin.