

to the other annuitants (other than the widow) during the five years succeeding the testator's death ought to be brought into hotchpot, and that the annuities should abate proportionately with those in remainder, but Farwell, J., held that as the income of the estate during the first five years could never have been applicable to the payment of the annuities in remainder, the annuitants in possession could not be required to bring the payments of income into hotchpot, and that as the power to raise the annuities out of the corpus would have entitled the trustees to exhaust the whole estate in payment of the annuities immediately payable therefore, the sum paid out of capital need not be brought into hotchpot either. He therefore declared that the amount due on the annuities which were immediately payable was the amount which had actually accrued due and was unpaid up to the time of the death of the annuitants, and refused any direction as to hotchpot.

MUNICIPALITY — BUILDING LINE — 'WRITTEN CONSENT' — BREACH OF STATUTORY PROVISION—PENALTY—SPECIAL DAMAGE TO INDIVIDUAL.

In *Mullis v. Hubbard* (1903) 2 Ch. 431, the plaintiff sought to recover damages from the defendant on the ground that he had erected buildings beyond the front main wall of the building on either side thereof in breach of a statute prohibiting such building without the consent of the municipal authority under a penalty of 4 s. for every day the offence is continued after written notice from the municipal authority. It appeared that the defendant had submitted his plans to the municipal body in accordance with their by-laws. They were considered by a committee of the municipal body and then stamped "approved" by the chairman of the committee. At a subsequent meeting of the general council of the municipal body a resolution was passed approving of the plans, and at the next general meeting the minutes of the previous meeting were read and confirmed and signed by the chairman. Farwell, J., held that the plaintiff had no right of action on the ground that the statute constituted one compound offence, consisting of building without consent and continuing the building after notice, for which a penalty was imposed, to be exacted by the municipal authority, and therefore it gave no cause of action to a private individual to whom special damage was occasioned. Moreover, that what had taken place constituted a sufficient 'consent in writing' of the municipality authority.