

to the enjoyment of the house, and, as the executors cannot sell this property under paragraph 33 of the will, as it is specifically disposed of, if it be thought best in the interests of all concerned that the house be sold, there can be no objection to the executors agreeing to pay her interest upon the price obtained for the house, or the revenue therefrom. . . .

The jewelry has not been sold—the question arises whether that is covered by the words “all the contents thereof” in paragraph 31. . . . What was left was to be for the advantage and pleasure of the two who were left, each in his or her own way—and the fact that the enjoyment could not be by both at the same time, and probably by one not at all, cannot change the meaning of the words. . . .

[Reference to *In re Johnston*, *Cockerell v. Earl of Essex*, 26 Ch. D. 538; *Robson v. Hamilton*, [1891] 2 Ch. 559; *Re Miller, Daniel v. Daniel*, 61 L. T. R. 365.]

In the present case, I think, to use the words of Chitty, J. (in *In re Johnston*), I shall be only giving effect to the intention of the testatrix by holding, as I do, that this jewelry passes as part of the contents of the house.

The learned Judge then answered the questions submitted. The effect of the questions and answers is, briefly:—

(a) Mrs. Wardell is not entitled to have the proceeds of the sale of the contents of the house, with horses, etc., applied for the purpose of refurnishing the house; she is entitled to the revenue for life.

(b) The revenue should be paid to Mrs. W.

(c) Mrs. W. is entitled to a life estate in the residence; R. S. O. 1897 ch. 119, sec. 11, has no application—the joint tenancy appears on the face of the will.

(d) The jewelry to be considered part of the contents of the residence; Mrs. W. has a life interest in the articles; she may better but not injure them, and should not do anything whereby the substantial identity is destroyed.

(e) As to keeping the residence in repair, payment of taxes, etc., Mrs. W. has all the duties of a life tenant, amongst them those of repair, etc.; and the trustees have no obligation in the premises.

(f) The trustees cannot sell the residence without the permission of Mrs. W. If it is desired to sell, the trustees may make a contract with Mrs. W. to pay her either the income of the purchase money or a fair rate of interest thereon for her life.

Costs of all parties out of the fund.