

tween giving a person a portion of the income of a fund and something payable out of it." . . .

[Reference to the facts of the case of *In re Morgan* and to the opinions of the Lords Justices.]

Although in the case at bar the gift is a direct gift of £654 "out of the rents and profits payable" from the property, and not, as in *In re Morgan*, a gift of the property to trustees to pay the annuities out of the interest and profits of the property, that circumstance is not, for the purpose of the present inquiry, of any importance.

It was contended by counsel for the appellant and for the three unmarried daughters that the language of the testatrix indicates that she intended that the gift should extend to the whole of the rents and profits of the property, and it was said that the increase to \$600 of the annuity to the granddaughter provided for in case upon renewal of the lease the rentals should be increased, upon the construction adopted by my brother Middleton, would result in the annuities to the daughters being correspondingly reduced, and that that could not have been the intention of the testatrix. I am unable to agree with that contention, and think that the increase in the granddaughter's annuity is to be made only if and so far as the increased rental will permit of its being made after providing for the annuities to the daughters. In other words, that the daughters are to have their annuities of £150 each, and that, if the increased rental should permit that being done, the granddaughter's annuity should be increased to the same amount.

It is quite impossible for me to conceive that the testatrix, who contemplated that there would be an increase in the rentals when the renewal took place, if she had intended to give the whole of the rents and profits of the property to the daughters and the granddaughter, would not have said so, instead of creating and disposing of a fund of £654 payable out of the rents and profits; and it is a strong circumstance making against the contention of the appellant that, although the testatrix, as I have said, contemplated an increase in the rental when the renewal of the lease should come to be made, the only increase in the annuities for which she provides is an increase in the annuity of the granddaughter.

It is to be observed, also, that in *In re Morgan*, the result of the decision was that the corpus of the fund was undisposed of, while in the case at bar there will be no such result, because of the residuary gift to all the sons and daughters of the testatrix.