

was declared that the executors were to be at liberty to apply the whole estate from time to time in payment of the annuity of \$800 to Harriet Dalton and in or towards satisfaction of the whole of the arrears of the annuities to her and Mary McMichael, deceased, before distributing any part of the corpus of the estate to or among residuary legatees. Since the making of the decree on further directions the trustees have applied the whole income of the estate in payment of the annuity of \$800 to Harriet Dalton until her death, and in payment of the arrears due to her and to the estate of Mary McMichael, deceased, and at the present time the arrears unpaid are as follows:—To the estate of Harriet Dalton, \$2,457.16; to the estate of Mary McMichael, \$1,043.61.

The present action is brought to determine the rights of all parties to the trust fund, which is said to amount to \$25,730, of which the greater part is upon mortgage security, the remainder being represented by houses which have fallen into the hands of the trustees for unpaid mortgage moneys.

The action was tried before Street, J., without a jury, on the 28th September, 1903.

D. T. Symons, for plaintiffs.

R. C. Clute, K.C., for defendant Edith J. Williams.

A. H. Marsh, K.C., and H. G. Kingstone, for representatives of annuitants.

H. Cassels, K.C., for those claiming as residuary legatees under codicil other than Emma Wilson.

R. S. Cassels, for those claiming as residuary legatees under codicil and as legatees under will other than Emma Wilson.

W. D. Gwynne, for Edward H. Dalton, claiming as residuary devisee under a codicil.

Shirley Denison, for defendant Emma Wilson, the sole surviving beneficiary.

STREET, J., held that the effect of the decrees in the former suit in Chancery was to set apart the whole estate as the fund to secure the payment of the annuities to the daughters of the testatrix, Mary McMichael and Harriet Dalton. The effect of these decrees and the action taken by the trustees in obedience to them must stand, and the necessary result is to make the whole estate pass under the codicil and to leave nothing for the will to take effect upon. The effect of the codicil, in the event which has happened, of both daughters having died without issue, is that the gift over takes effect,