2. Mr. Justice Middleton has held that "the widow is entitled to receive the balance of her annuity; and, if it is material, resort should first be had to the proceeds of the land descended." The widow having elected under the Devolution of Estates Act to take the half of the land descended in lieu of her dower, the other half is undisposed of, and descends as on an intestacy. The appellants represent the class entitled to this half, and claim that their land should be exonerated.

That recourse can in no event be had to the corpus of the fund invested under clause 5 is clear. That corpus is specifically, and not by way of residuary gift, bequeathed to the appellants: Foster v. Smith, 1 Ph. 629; Earle v. Burlingham, 24 Beav. 445; Aldecott v. Aldecott, 29 Beav. 460; Sheppard v. Sheppard, 32 Beav. 194; In re Matthews Estate, 7 L.R. Ir. 269.

There is here "a gift . . . importing the specific bequest of a sum . . . accompanied by an expression of his intention that that sum should pass intact to the legatee:" per Lord Watson in Carmichael v. Gee, 5 App. Cas. 588, at p. 598.

But full effect must be given to the express and specific bequest of an annuity contained in the 4th clause, so far as that is possible.

Where an amount is given in general terms, followed by the creation of a fund out of the income of which the amount is to be paid, it is a matter of interpretation of the wording of the particular will whether the annuitant is confined to that income.

It may be that the will is so worded that the Court interprets it as meaning that the annuitant is entitled for life to the income of a fund, and nothing else. Such was Baker v. Baker, 6 H.L.C. 616, and there are many such cases.

But the more usual case is the gift of an amount with a direction to form a fund wherewith to pay it, without any indication that the annuitant is so to be limited. In that case the amount becomes payable out of the estate not specifically bequeathed (including the corpus of the fund, if that be not bequeathed specifically, but as a residue): Gee v. Mahood (1879), 11 Ch.D. 891; S.C., sub nom. Carmichael v. Gee, 5 App. Cas. 588.

There are many such cases in England and Ireland mentioned in Theobald on Wills, Can. ed., p. 508, and in Ontario, pp. 512 b, c. To these I add Re Plaetzer Estate (1911), 2 O.W.N. 1143.

The deficiency, therefore, should be paid out of the estate not specifically disposed of, and out of that only.