This fund is divisible after the year 1911, as follows: Two-ninths to Hannah, two-ninths to Jean, two-ninths in trust for the son and the income of the remaining three-ninths to the step-mother during widowhood. It is obvious if Hannah Gertrude took by way of gift all the personal property, the remainder would have been altogether inadequate for the maintenance of the children and step-mother and the provision for the latter, on a division of the fund, and which is the only provision the testator seems to have made for his wife, would be, one would say, out of proportion to the value of the estate.

I have mentioned two of the three classes of cases in which questions of this kind arise. The third is where there is a gift, but not to take effect until the donor's death and which is therefore testamentary in its character. I think it not unlikely that the testator may have had some such idea in his mind. In his will he excepts such of the personal property in the boxes, not "which I have already given," but which I had already given, that is, as I read the words, as he had before his death given. The immediate personal necessities of the two daughters for the relief of which the gifts were made, could not very well refer to necessities during the testator's life, because he would relieve these himself. The marking of the envelope with the names of the testator and daughter sustains the notion that she was to have an interest, but it equally sustains the notion that he had not parted with his. And strongest of all is the fact that up to his death he retained the possession and control of all these securities, treated them as his own and collected the interest and dividends for his own use. This is entirely opposed to the idea of a present gift, except where the gift had been in fact completed and became irrevocable as in the case of the assigned securities I have mentioned and which answer the description of the property excepted. If any such gift as I have described were intended as to the other securities or any of them, it would be testamentary in its character and of no validity by reason of the formalities of the Wills Act requisite in such cases having been disregarded: Warrainer v. Rogers, 16 Eq. 340.

There will be a declaration such as I have mentioned and the costs of all parties will be paid out of the residuary estate of the testator, the executor's costs to be allowed as between solicitor and client.