

Kekewich, J., on appeal considered that although the defendant's mortgaging the Ceylon estates was a breach of trust, yet was of opinion that as the plaintiff had suffered no loss, and the defendant had obtained no benefit thereby, he was not chargeable with any part of the £35,000. The Court of Appeal (Lindley, M.R., and Rigby and Collins, L.JJ.), on the other hand, thought that the proper method of taking the account was to apportion the £20,000 on the Ceylon and Cumberland estates, according to their respective values, and on that basis they held that the defendant was chargeable with three-fourths of the £20,000, and the appeal from Kekewich, J., was allowed.

MORTMAIN—WILL—DISCRETION OF TRUSTEES—"GIFT TO SUCH CHARITABLE INSTITUTIONS AND OBJECTS AS MY TRUSTEES MAY DETERMINE"—IMPURE PERSONALTY—CHARITABLE USES ACT, 1735 (9 GEO. 2, c. 36.) SS. 1, 3, 4.

In re Piercy, Whitwham v. Piercy (1898) 1 Ch. 565, involves a question under the Mortmain Act (9 Geo. 2, c. 36), similar to that discussed in *Anderson v. Dougall*, 13 Gr. 164. A testator by his will had devised and bequeathed real and personal property for sale and conversion, and out of the proceeds directed his trustees to apply one-tenth of the fund to "such charitable institutions and objects as my trustees may determine." The question was whether the gift was good as regarded the impure personalty, and proceeds of sale of realty. The Court of Appeal (Lindley, M.R., and Rigby and Williams, L.JJ.), agreed with North, J., that the gift extended to the impure personalty and proceeds of realty, and conferred upon the trustees a power of selection, which could be validly exercised in favour of any object or institution exempted from the operation of the Act, (9 Geo. 2, c. 36); but that no exercise of the power of selection of an unexempted charitable institution or object would operate as a valid gift of the impure personalty and proceeds of sale of real estate. Williams, L.J., says: "It seems to me that in *Lewis v. Allenby*, L.R. 10 Eq. 668, it is tolerably clear that Stuart, V.C., meant to decide that a gift would not be outside the provision contained in the 1st and 3rd section of 9 Geo. 2, c. 36, unless in a case where it included the gifts avoided by