

MIDDLETON, J., said that, if the testator had given a fee simple, then a gift over engrafted upon that would be repugnant and void; but, if the testator had given a life estate, he might also give a power of sale and a right to encroach upon the corpus. That was what had been done in this case. The gift over of that portion of the estate of the testator which might remain indicated that the use and enjoyment which was permitted to the life-tenant was a use and enjoyment which might result in the consumption of the thing enjoyed.

It should therefore be declared that this was the construction of the will, and that the husband had the right to convey, and that a good title could be made.

Unless otherwise arranged, the costs should come out of the estate.

LATCHFORD, J.

JULY 3RD, 1915.

RE ABBOTT.

Will—Construction—Trust for Investment—“Interest-bearing Securities”—Company-shares—Mortgages—Interest or Income.

Motion by the executrix of the will of Edwin Abbott, deceased, for an order determining questions arising upon the terms of the will in the course of administration of the estate of the deceased.

By clause 4, the testator directed his executrix to set aside from his estate \$25,000 “to be held by her upon trust. This trust fund may be composed in whole or in part of interest-bearing securities held by me at the time of my decease. As these securities are paid-up I direct the said trust fund to be kept on deposit in at least three chartered banks at interest. As income or interest arising or derived from the said trust fund of \$25,000 I give devise and bequeath unto my . . . wife . . . for her own use and during the term of her natural life. In the event of the income of the said trust fund being less than the sum of \$750 in any year during the life of my said wife, I authorise and empower my said executrix to withdraw from the principal of such trust fund whatever sum may be necessary in any year to cover the deficiency between the actual income derived from the said trust fund and the sum of \$750.”

After the death of his wife, the testator directed, the principal of the trust fund was to pass to his nephews.