

The residuary clause was as follows:—

"If my estate is sufficient to pay more than the bequests named above, I direct my trustees to divide the residue equally amongst my brother, my sister, her daughters, my daughter, and any daughter unmarried (at my death) of my brother W. J. Ranton."

The appellant was a daughter of the testator's brother W. J. Ranton, and was, to the knowledge of the testator, at the time of the making of the will and of his death, a widow.

For the appellant it was argued that "unmarried" was not to be read in its primary sense, i.e., "not having been married," and that this was shewn: (1) by the testator's reference, in a previous provision of the will, to the appellant as "Lucie Ranton;" (2) by the use of the word "any" before the words "daughter unmarried;" (3) by the use of the words "at my death."

It was contended that the testator by referring to the appellant by her maiden name treated her as unmarried.

W. J. Ranton had five daughters, all of whom, except the appellant and one daughter who was a spinster, had husbands living; and the testator must, therefore, it was contended, have treated the appellant as unmarried.

This contention overlooked the fact that it was within the bounds of possibility that W. J. Ranton might in the future have other children, and it might be that the testator had that in view and desired to provide for any afterborn children of W. J. Ranton who should be unmarried at his (the testator's) death.

If one were permitted to conjecture, it might not be difficult to reach the conclusion that the testator intended to provide for the appellant as an unmarried daughter. The Court, however, could not act on mere conjecture, but must give to the word "unmarried" its primary meaning unless it was clear from the terms of the will that the testator did not use the word in that sense.

In re Collyer (1907), 24 Times L.R. 117, referred to.

The appellant had not satisfied the onus that rested upon her of shewing that the testator intended to use the word "unmarried" "in a secondary and less proper sense:" *Low v. Smith* (1856), 2 Jur. N.S. 344.

The appeal should be dismissed, and the costs of all parties should be paid out of the residuary estate.

*Appeal dismissed.*