

of the £2 10s. per week to his son James during his life, but that if she should not think fit to exercise the power in favour of James she should have full power to dispose of the same as she might think best. "Subject as aforesaid," the testator gave his estate in trust after his wife's death in favour of his children. A power of sale was given by the testator to his trustees, and he declared that any of his children disputing his will should be deprived of all interest thereunder. The testator died in 1894 leaving his wife and all the children named in the will surviving him. James died in the lifetime of his mother. The mother died in 1909, leaving a will whereby she devised and bequeathed "all the residue of my real and personal estate not hereby otherwise disposed of." It was contended that this clause did not operate as an execution of the power to appoint the sum necessary to raise £2 10s. per week in perpetuity, because it was not a general power of appointment, as the exclusion of James and the other children who disputed the will rendered the power special; and that if there were a general power it did not apply to real estate; and that there was no trust for conversion, and that in order that the will of the widow might operate as an appointment it was necessary first to have created a charge of the money on the land. Parker, J., who tried the case decided (1) that a charge on the testator's residuary real and personal estate for any sum the widow might appoint under the power was created by the words "subject as aforesaid." (2) That notwithstanding the exclusion of children who disputed the will from the benefit of the power, the widow in the events which had happened had a general power in respect of the sum which might be raised. (3) That although there was no express trust for conversion, the power was an overriding one to appoint a mixed fund of realty and personalty, and (4) that by virtue of s. 27 of the Wills Act (Edw. VII. c. 57, s. 30 (Ont.)) the power was exercised by the residuary gift in the wife's will.

SETTLEMENT—CONSTRUCTION—MISTAKE OF FACT—MISDESCRIPTION—CLERICAL ERROR—"TAIL MALE" INSTEAD OF "TAIL GENERAL."

*In re Alexander Jennings v. Alexander* (1910) 2 Ch. 225. This was a summary application by trustees, for the construction of a marriage settlement made in 1886, whereby it was provided that if the settlor's eldest son should become entitled to his grandfather's real estate under his will for an estate "in tail male"