

of the testator's estate "in its present form of investment." Part of his estate consisted of shares in a flourishing company. This company had been voluntarily wound up and a new company formed which took over all the assets of the old company, and the shareholders of the old company were allotted paid up shares in the new company for all shares held by them in the old company, and also in addition certain preference paid up shares in the new company. No alternative terms of accepting cash instead of shares were offered. The trustees accepted the shares in the new company, and the question submitted to Buckley, J., was whether they were, under the clause of the will above referred to, empowered to retain them, and it was held by the learned judge that notwithstanding the change which had taken place the new shares resulted from the old shares without any act on the part of the trustees and were therefore to be regarded as the same investment as that existing at the testator's death, and therefore within the clause of retainer.

**GENERAL POWER OF APPOINTMENT—EXERCISE OF POWER BY WILL—
COVENANT TO EXERCISE POWER IN PARTICULAR WAY—LIABILITY OF
APPOINTED FUND TO DEBTS.**

In re Lawley, Zaiser v. Lawley (1902) 2 Ch. 673, was a creditor's action for the administration of the estate of F. C. Lawley, in which a conflict arose between the general body of creditors and a mortgagee who claimed preferential rights on a fund appointed by Lawley's will. It appeared that Lawley was entitled to a testamentary power of appointment upon a fund of £10,000, and being so entitled borrowed £1000 from the mortgagee and as a part of the bargain for the loan agreed to execute the power by his will, and in pursuance of this agreement he by his will appointed the fund to the trustees of his will, and declared that the trustees of his will should stand possessed of the £10,000 upon trust to pay the mortgage in preference to all other payments. The general body of creditors claimed that by the exercise of the power by will the fund became assets for the payment of debts generally, and that the mortgagee was not entitled to priority, and it was so held by Joyce, J.