

It is true that the effect of this view being given effect to will be to reduce the amount of the income which the widow will receive, but that is a result which follows from the dispositions the testator has made, and there is no help for it. It may well be, I think, that the testator, when he made the codicil, had in view that this would be the result of the provisions he had made by his will, and that one of his objects in providing that there should be no division of his real property for ten years after his death was to prevent that from happening by keeping his real estate, from which the bulk of the income would be derived, intact for that period. . . .

It was not proper, I think, upon the motion before my brother Middleton, to direct the inquiry which he directed to be made as to an allowance for maintenance to the children. It will be time enough after the true construction of the will and codicil has been determined, if any child thinks that the discretion of the widow has not been exercised in good faith and that he is prejudicially affected, to take such steps as he may be advised to enforce any right he may claim to have to the intervention of the Court, and it would be most unjust to the widow to make any such direction as has been made until she, with the knowledge that as the result of the litigation she will have obtained as to her rights and duties, has failed to perform any duty which may rest upon her. . . .

I do not differ from my brother Middleton as to rights of the widow and the children in respect of the annual income of the estate, except in two particulars. In my learned brother's view, the discretion which the widow is entitled to exercise as to the application of the income to the maintenance of the children is limited to deciding what amount shall be applied for the maintenance of each child, and that she is not entitled to exercise a discretion as to whether or not a child need or should receive an allowance for maintenance; while I am of opinion that she is entitled to exercise her discretion both as to whether a child needs and ought to receive an allowance for maintenance and as to the amount of the allowance if she deems the case one in which an allowance should be made, and that her discretion, if honestly exercised, is not open to review or to be overridden because a Court may happen to take a view which differs from hers. The other matter as to which we differ is as to the children whose claims for an allowance for their maintenance it is her duty to consider. As I understand my learned brother's rea-