

Originating notice to determine certain questions under the will and marriage settlement of the late Frances Ellen Wood Eliot, argued 18th April, 1913.

J. W. Bain, K.C., for Green & Lewis, executors of the will of the late Frances Ellen Wood Eliot, and trustees under her marriage settlement.

F. W. Harcourt, K.C., for the infants, other than the eldest, Margery.

C. A. Moss, for Margery and for her father, Chas. A. Eliot.

HON. MR. JUSTICE MIDDLETON:—The testatrix was a daughter of the Honourable John Hamilton, who by his will directed his residuary estate to be divided among his children, and that the portions allotted to the daughters—should be set apart and invested, the income being paid over to them until they marry or attained the age of thirty years, when their portions should be settled, if they are then married, in such a way as to be free from the control of any husband and to be inalienable during their lives.

Pursuant to this provision, a marriage settlement was executed on the 5th October, 1891; the property coming to the testatrix being vested in trustees for the use of the testatrix during her natural life and upon her decease the trustees are directed to divide and apportion the same among the issue of the contemplated marriage in such shares and in such manner as she may by her will appoint.

Mrs. Eliot died on the 11th December, 1905, having first made her will. By it she recites her father's will and the marriage settlement and the power of appointment by will thereunder, also that two sons and two daughters, all of tender years, had been born to her. Pursuant to this power, she directs her property to be divided among the children in equal shares; "the share of each of my sons to be vested in and transferred to him upon his attaining the age of twenty-five, and the share of each of my daughters to be vested in her on her attaining the age of twenty-five years or on her marriage previously with the consent of her guardian herein named and not otherwise, whichever event shall first happen"

The will then provides that the share of each daughter shall not upon the vesting be transferred to her, but that a settlement shall be executed to secure to the daughter the free use and enjoyment of her share free from the control of