

MAY 1ST, 1914.

## RE REBECCA BARRETT.

*Will—Construction—Gift to Daughters—Annuity out of Rents of Land or Estate Tail in Land—Bequest to Granddaughter—Increased Rental—“Out of the Rental”—“Issue”—Limitation to Children—Residuary Clause.*

Appeal by Helena A. Mosson, the married daughter of the testatrix, from the order of MIDDLETON, J., 5 O.W.N. 807.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

F. Arnoldi, K.C., for the appellant.

W. N. Tilley, for the unmarried daughters of the testatrix.

I. F. Hellmuth, K.C., for the sons.

H. S. White, for the executors.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—I agree with my brother Middleton that there is no gift to the daughters of the rents and profits of the Bostwick property, and that the effect of the will is to give annuities payable out of these rents and profits.

It is unquestionable that, unless a contrary intention appears by the will, a devise of the rents and profits of land carries the land itself, and, by force of the Wills Act, the fee simple or other estate of the testator in the land; and in *Goring v. Hanlon* (1869), 4 Ir. C.L.R. 144, it was sought to extend this rule of construction to bequests of specific annual sums out of land, but it was held that it was not applicable, even though the specific sums happened to be the whole of the rent which at the time the land produced.

Some support for the proposition that a devise of an aliquot part of the rents and profits of land passes a like part of the land itself is to be found in *Bent v. Cullen* (1871), L.R. 6 Ch. 233; but that case cannot, in the light of subsequent cases, be treated as authority for the proposition, and it is stated in *Theobald on Wills*, 7th ed., p. 503, that it “must be considered overruled.” The case is discussed in *In re Morgan*, [1893] 3 Ch. 222, and it was there said by Lindley, L.J. (p. 228), that he could “not help thinking that in *Bent v. Cullen* the Lord Chancellor, Lord Hatherley, did for a moment fail to observe the difference be-