

J. W. Carrick, for the defendants Emily Montague Butler and three others.

George Bell, K.C., for the other defendants, except William Elkington Butler, who was not represented.

KELLY, J., in a written judgment, said, after setting out the facts, that the first question was, whether the annuity of \$1,500 to the widow was payable out of the corpus of the estate if the income was insufficient for the purpose.

After reviewing the authorities, and referring especially to *Carmichael v. Gee* (1880), 5 App. Cas. 588, the learned Judge said that his opinion was that the annuity of \$1,500 in favour of the widow during her life was, as the will said, a first charge on the whole estate, not limited in amount to the income from any particular part, or from the whole, of the estate; and that, if the income proved insufficient, the corpus might be resorted to.

Answers to the other question were given as follows:—

(2) The legacy of \$4,000 to Maude Brown (now Winlow) was not payable at the expiration of one year from the testator's death; it is payable at the time of the death of the widow of the testator, and will bear interest from that date.

(3) The order of payment is: (1st) The annuity to the widow. (2nd) The annuities to the son and three daughters and the granddaughter and sister (in her case ending with her death). (3rd) The legacy of \$4,000 to the granddaughter is payable next after these annuities and in priority to the son and daughters of the testator (or their heirs) sharing the residue under the residuary clause. The annuities (except that to the widow) abate together in the event of an insufficiency after providing for the widow's annuity.

(4) Subject to the widow's annuity, the annuities to the son, three daughters, granddaughter, and sister, are payable out of the corpus if the income is insufficient. Notwithstanding that the annuity to the widow is a first charge on the estate, these other annuities (subject to the widow's first charge) are payable during the widow's lifetime (in the case of the sister ending with her death).

(5) If the death of the son, three daughters, or granddaughter, or any of them, happens before the death of the widow, the annuity to the one so dying does not cease, but continues to be payable until the widow's death to the heirs of the one so dying, or as the one so dying "may desire in writing to leave it to," as expressed in the will, in respect of residue.

Costs of all parties out of the estate; those of the trustee-applicant as between solicitor and client.