

charged upon his general estate, except his property at Holland Landing. And if he intended or supposed that it had been all given to W. H. Thorne by what Street, J., terms the 2nd paragraph of the will, it would have been sufficient for him to have said: "But I hereby except my said property at Holland Landing aforesaid from the payment of any portion of such last mentioned annuity to my said wife:" and stopped there. But he proceeds, "as well as my personal estate, money and securities for money, also at Holland Landing aforesaid." This makes it plain that by the words "my said property at Holland Landing aforesaid," he did not intend to include his personal estate, money and securities for money, at Holland Landing.

Referring again to what has been termed the 2nd paragraph, it is manifest that the testator intended to charge the property he was giving to W. H. Thorne, with the payment of certain annuities and legacies. He says, "I hereby charge the said Holland Landing property," that is, the Holland Landing property he had just given to W. H. Thorne. Then in the exception in what has been termed the 3rd paragraph, he uses not quite but substantially the same expression, viz., "my said property at Holland Landing aforesaid," and so again indicates the property he had given to W. H. Thorne. Then follow the words already quoted which interpret the foregoing words as not including the personal estate, money and securities for money, at Holland Landing. And this construction leads to the exclusion of any claim of W. H. Thorne to the book debts in question.

I have arrived at this conclusion without reference to the appearance of the original will. If we are at liberty to look at it for the purposes of construction—as to which see *Child v. Ellsworth*, 2 DeG. M. & G. 683; *Manning v. Purcell*, 7 DeG. M. & G. 55; *Gauntlett v. Carter*, 17 Beav. 590; *Turner v. Hellard*, 30 Ch. D. 390—an inspection of what has been termed the 2nd paragraph lends support to the view that the testator's intention was not to include in the gift to W. H. Thorne the personal estate, moneys and securities for money, at Holland Landing.

As to the order for costs against the plaintiff W. H. Thorne, counsel appeared for him before the Divisional Court and was heard in opposition to the appeal. He appears not to have contented himself with submitting his rights as a trustee, but to have actively intervened as a contestant. He seems to have made common cause with the other respon-