

children, excepting the share to my deceased daughter Theresa—her share shall be paid to her children at the ages of 21 years. Before making the aforesaid divisions my executors shall deduct . . . \$1,000 from my daughter Louisa, . . . \$400 from my daughter Julia, and . . . \$180 from my daughter Theresa. My executors shall invest, if possible, the share going to the children of my deceased daughter Theresa . . . and keep so invested until they reach the ages of 21 years with interest in favour of said children. All the residue of my estate not hereinbefore disposed of, I give . . . unto my said wife."

The widow of the testator died on the 4th October, 1919, leaving a will whereby she devised and bequeathed all her real and personal estate to her executrices upon trust to convert into money and to pay two small legacies and divide the balance between her daughters Matilda Arnold and Louisa Logel.

The questions submitted were: (1) What estate did the widow take under the will of her husband? (2) Is a trust created by the will of John Brenner for his children and grandchildren?

In the learned Judge's opinion, there was an absolute gift to the widow of the real and personal estate of the testator, and nothing was found in the will to cut this down to a life-estate. The authorities require that, unless the intention to cut down the absolute estate is apparent on the face of the will, it remains. Even if the will could be construed as a gift of the residue remaining at the death of the wife to the children, that would not deprive the widow of the absolute estate: *Re Miller* (1914), 6 O.W.N. 665; *Constable v. Bull* (1849), 3 DeG. & Sm. 411; *In re Walker*, [1898] 1 L.R. 5.

Order declaring that the widow took an absolute estate and that no trust in favour of the children and grandchildren was created; costs of all parties out of the estate.

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SUTHERLAND, J.

JULY 15TH, 1920.

RE SMITH.

*Will—Construction—Division of Estate among Children—Provision for Case of Child Dying without Issue—"My other Children"—Ascertainment of Class as at Death of Testator.*

Motion by the National Trust Company Limited, trustees of the estate of John Smith, deceased, for an order determining two questions as to the proper construction of the will of the testator.