

WILL—CONSTRUCTION—HOTCHPOT CLAUSE, EFFECT OF.

In re Cosier, Humphreys v. Gadsden, (1897) 1 Ch. 325, the proper construction to be placed upon a hotchpot clause in a will was under consideration. A father on the marriage of his son in 1885 covenanted with the trustees of the son's settlement that his executor should within six months of his decease pay the trustees £10,000, to be held by them on trust for the son for life, with remainder to his wife for life, and after the death of the survivor, for the issue of the marriage, and in default of issue, in trust, for the father (the covenantor), absolutely. The father died in 1886, having by his will given the residue of his estate upon trust for his son and daughter in equal shares. The will provided that any and all sums which the testator had already covenanted to give to or with any child of his, on his or her marriage, should be taken in and towards satisfaction of the respective share of such child, or the person claiming under or in substitution for her or him, under the testator's will, and should be brought into hotchpot and accounted for accordingly. On the father's death, after payment of the £10,000 to the son's trustees, his residuary estate amounted to £42,000, and of this sum £16,000 was paid to the son, and £26,000 to the daughter. The son having since died, leaving a widow, but without issue, it was now claimed that the £10,000 was divisible under the residuary clause between the daughter of the testator and the executors of the son, and Chitty, J., so held, but the effect of this decision was to give the daughter £10,000 more than the son, and the Court of Appeal (Lindley, Smith and Rigby, L.JJ.) were of opinion that that construction could not be maintained, and that the effect of the hotchpot clause in this particular case was to give to the son absolutely the testator's contingent reversionary interest in the £10,000, and on the death of the son without issue, his executors became absolutely entitled to the £10,000, subject to the life interest of the widow of the son therein.