

contained some other provision dealing with the maintenance of the wife after the time named, the suggested meaning might well be attributed to clause 8. But it was not conceivable that the testator intended that the provision made for his wife's maintenance should not continue during her entire life, provided that she remained his widow.

Clauses 10 and 11 should be regarded as becoming operative only upon the death or remarriage of the widow before the youngest child attained majority, or upon a disagreement taking place between the widow and the children during the time for which she was obliged to maintain them, as provided in clause 8, that is, until they respectively attained full age; and, having this in view, these clauses could not now be invoked, even if the executors should think the separation of the widow and children desirable by reason of their disagreement. These clauses, however, were important as shewing the testator's intention. It was impossible to believe that the testator did not intend that the annuity payable to her in the event of her doing that which the testator mainly desired—maintaining the home for the family—should come to an end before her death.

The provisions of clause 8 are contradictory if the contention of the children prevails; for, while it commences by speaking of payment of an annuity to the widow until the youngest surviving child attains the age of 21, it clearly contemplates that this payment shall continue thereafter "for the support and maintenance of my said wife while she remains my widow." Full effect can be given to the limitation found in the first line of the clause by reading the clause as providing for payment of this annuity until the youngest child attains the age of 21 for the support of the widow and the children and thereafter for the widow's own use.

As this annuity is to be paid out of the entire income of the estate, it follows that the distribution, or part distribution, provided for by clause 12, must be postponed until the widow's death. It was not the testator's intention that the widow's right to maintenance should be sacrificed for the purpose of making an early distribution among his children; and it is more consistent with the will that the provision for distribution should have to give way to the dominant intention of providing what the testator thought was an adequate maintenance for his widow.

As the widow's annuity was payable out of income—and income alone—there was no right to resort to the capital.

LATCHFORD, J., and FERGUSON, J.A., agreed with MIDDLETON, J.

RIDDELL, J., in a written judgment, after discussing the terms of the will, said that, being of the opinion that the children had